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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 641

J. D. ADAMS MANUFACTURING COMPANY,
APPELLANT,

vs.

WILLIAM STOREN, AS CHIEF ADMINISTRATIVE
OFFICER OF THE DEPARTMENT OF TREASURY
OF THE STATE OF INDIANA

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

FILED DECEMBER 17, 1937.

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[fols. 1-2]

[Caption omitted]

[fol. 3]

IN SUPERIOR COURT OF MARION COUNTY

J. D. ADAMS MANUFACTURING COMPANY, Plaintiff,

vs.

WILLIAM STOREN, as Chief Administrative Officer of the Department of Treasury of the State of Indiana; Department of Treasury of the State of Indiana, Paul V. McNutt, William Storen, Floyd E. Williamson, as and Constituting the Board of Department of Treasury of the State of Indiana; Philip Lutz, Jr., as Attorney-General of the State of Indiana, Defendants

COMPLAINT FOR DECLARATORY JUDGMENT ON THE GROSS INCOME TAX ACT OF 1933—Filed June 10, 1933

Plaintiff brings this suit under and pursuant to an act of the General Assembly of the State of Indiana entitled "An Act concerning declaratory judgments and decrees and to make uniform the law relating thereto" approved March 5, 1927, known as the Uniform Declaratory Judgments Acts, and complaining of the defendants above named, says:

1. Plaintiff, J. D. Adams Manufacturing Company, is a corporation duly organized and existing under the laws [fol. 4] of the State of Indiana, having its manufacturing plant, home office and principal place of business at Indianapolis, Marion County, Indiana, and is a citizen and resident of said State.

2. Defendant William Storen is the duly elected, qualified and acting Treasurer of the State of Indiana, and as such is the chief administrative officer of the Department of Treasury of the State of Indiana, and as such Treasurer is also a member of the Board of Department of Treasury of the State of Indiana.

Defendant Paul V. McNutt is the duly elected, qualified and acting Governor of the State of Indiana and as such is a member of the Board of Department of Treasury of the State of Indiana, Defendant Floyd E. Williamson is

a duly appointed, qualified and acting member of the Board of Department of Treasury of the State of Indiana. The defendants Paul V. McNutt, William Storen and Floyd E. Williamson together constitute the Board of Department of Treasury of the State of Indiana and as such are in charge of the Department of Treasury of the State of Indiana.

Defendant Philip Lutz, Jr. is the duly elected qualified and acting Attorney General of the State of Indiana.

Defendants are the state officials charged with the duty of administering and enforcing the gross income tax act of 1933 hereinafter referred to, and of assessing, levying and collecting the taxes provided for therein.

[fol. 5] 3. Plaintiff is the owner of real and personal property located in said City and State and pays taxes levied thereon for state, municipal and local purposes; and if the certain law enacted by the General Assembly of the State of Indiana, known as the "Gross Income Tax Act of 1933" (Chapter 50 Acts 1933) hereinafter referred to, be valid and enforceable in any of its provisions as applied to the plaintiff, plaintiff will also be compelled to pay such taxes as are levied and assessed against it by the defendants in such amounts and in such manner as said act shall be construed and applied to the plaintiff by said defendants; and plaintiff brings this action in its own behalf and in a representative capacity in behalf of all other taxpayers, citizens and residents of Indiana or elsewhere who are similarly situated.

4. Plaintiff is engaged in the business of manufacturing for sale various kinds of machinery, tools, appliances and equipment for the construction, improvement, working, repair and maintenance of roads and highways. Plaintiff's only factory is located at Indianapolis in the State of Indiana. Plaintiff as a manufacturer engaged in the business aforesaid, sells and disposes of its various products within the State of Indiana, and in other states and territories of the United States, and in foreign countries, as follows:

(a) Plaintiff sells a substantial part of its products in quantities to independent distributors located in various states other than the State of Indiana. Such distributors [fol. 6] resell said products to their own customers. Such distributors are not the agents of the plaintiff nor are they

subject to plaintiff's control but are in each case engaged in business on their own account as independent dealers. The products so sold to distributors are shipped from plaintiff's factory direct to such distributors in other states upon orders approved at the home office of plaintiff. Plaintiff also ships its products upon orders of the distributor, approved at the home office of plaintiff, direct from plaintiff's factory to purchasers from the distributor, all such shipments being made to states other than Indiana. Payments for all such products are made by the distributors direct to the plaintiff at its home office in Indianapolis.

Since the first day of May, 1933, when the gross income tax law hereinafter referred to became effective, plaintiff has sold and delivered products to independent distributors and to purchasers from such distributors in the manner above stated, the entire gross income from which will be in excess of Fifteen Thousand Dollars (\$15,000), a part of which has been collected and received and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in regular course of its business sell further larger quantities of its products in the manner aforesaid, and will collect and receive further gross income therefrom in a substantial sum, the exact amount of which cannot now be estimated.

[fol. 7] (b) Plaintiff sells a substantial part of its products to purchasers located in states other than Indiana through agents of the plaintiff who solicit and take orders in such states for said products. All such sales are made upon orders subject to approval at the home office of plaintiff, and such products are shipped from plaintiff's factory direct to the purchasers in other states. Payments for said products are made to plaintiff at its home office in Indianapolis. A portion of such sales are to ultimate users, and a portion of such sales are in quantities to dealers who resell such products.

Since the first day of May, 1933, plaintiff has sold and delivered products in the manner above stated to customers outside the State of Indiana, the entire gross income from which will be in excess of Five Thousand Dollars (\$5,000), a part of which has been collected and received and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further large quantities of its

products in the manner aforesaid and will collect and receive further gross income therefrom in substantial sums, the exact amount of which cannot now be estimated.

Of the total amount of gross income received or to be received from sales to purchasers outside the State of Indiana in the manner aforesaid, an amount in excess of Two Thousand Dollars (\$2,000) has been or will be received from purchasers who are ultimate users of the products sold to them.

[fol. 8] (c) Plaintiff sells a substantial part of its products through its agents, on orders subject to approval at its home office, to purchasers in the Dominion of Canada and other foreign countries. All products as sold are shipped from plaintiff's factory direct to the purchasers in such foreign countries, and payment is made therefor at the home office of the plaintiff in Indianapolis.

Since the first day of May, 1933, plaintiff has sold and delivered products to foreign countries as above described, the entire gross income from which will be in excess of One Thousand Five Hundred Dollars (\$1,500), a part of which has been collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further large quantities of its products in the manner aforesaid and will collect and receive further gross income therefrom in a substantial sum, the exact amount of which cannot now be estimated.

(d) Plaintiff sells a part of its products through its agents to the Government of the United States, its departments or agencies, on orders approved at the home office of the plaintiff. Such products so sold are delivered to the United States Government, its departments or agencies in the various states of the United States, including the State of Indiana, as instructed by the Government at the time of sale.

Since the first day of May, 1933, plaintiff has sold and delivered products to the United States Government as above stated, the entire gross income from which will be in [fol. 9] excess of Two Thousand Dollars (\$2,000), a part of which has been collected and received and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further quantities of its products in the manner aforesaid and will collect and receive further gross income

therefrom in a substantial sum, the exact amount of which cannot now be estimated.

(e) Plaintiff sells a substantial portion of its products, and delivers the same direct from its factory, to purchasers within the State of Indiana. A portion of said products so sold in Indiana is sold to purchasers who are the ultimate users thereof, and the remaining portion thereof is sold to independent dealers [who resell to independent dealers]* who resell the same in Indiana and other states and foreign countries.

Since the first day of May, 1933, plaintiff has sold and delivered products in the manner above stated, the entire gross income from which will be in excess of Thirty-five Thousand Dollars (\$35,000), a part of which has been collected and received and the remaining portion of which will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further quantities of its products in the manner aforesaid and will collect and receive further gross income therefrom in a substantial sum, the exact amount of which cannot now be estimated.

5. Plaintiff during certain seasons each year when all of its working capital is not represented in raw materials, [fol. 10] work in process or completed products, regularly invests for temporary periods a substantial portion of its working capital in bonds, notes and other evidence of indebtedness issued by municipal corporations within the State of Indiana; all of which bonds, notes and other evidence of indebtedness bear interest, and by the statutes of Indiana in force now and at the time of issuance of such bonds (being Section 6 of an Act entitled "An Act concerning taxation, repealing all laws in conflict therewith and declaring an emergency, approved March 11, 1919" as amended by Chapter 191, Acts of 1923; Section 14037 Burns Indiana Statutes 1926) are declared to be exempt from taxation. When the business of plaintiff requires the return of such working capital to its manufacturing operations, such nontaxable securities are sold and converted into cash.

Plaintiff had acquired prior to February 27, 1933, and had in its possession on May 1, 1933, securities of the character above described, representing an investment of work-

[*Matter enclosed in brackets, struck out in copy.]

ing capital of the plaintiff in excess of Two Hundred Thousand Dollars (\$200,000). Since the first day of May, 1933, plaintiff has collected and received as interest earned and payable on such non-taxable obligations a total sum in excess of Two Thousand Five Hundred Dollars -\$2,500). Since the first day of May, 1933, plaintiff has also collected and received as principal paid by the issuer at maturity of such non-taxable obligations a total sum in excess of One Hundred Thousand Dollars (\$100,000). Since May 1, 1933, plaintiff also has sold various of such non-taxable obligations for the purpose of converting them into cash for working capital, and from such sales has collected and received [fol. 11] a total sum in excess of Ten Thousand Dollars (\$10,000).

6. Plaintiff has also acquired in the manner and for the purposes above described in paragraph 5 of this complaint and is the owner and holder of One Hundred Thousand Dollars (\$100,000) par value of bonds of the Fletcher Joint Stock Land Bank (at Indianapolis, Indiana), which bonds were issued pursuant to an Act of the Congress of the United States which became a law July 17, 1916 (Chapter 245, 39 Stat. at Large 380, Sec. 26; U. S. C. A. Title 12, Secs. 641 and 931) and are by said Act declared to be instrumentalities of the United States and both as to principal and interest exempt from federal, state, municipal and local taxation. Since the first day of May, 1933, plaintiff has collected and received as interest earned and payable on such bonds the sum of Two Thousand Five Hundred Dollars (\$2,500).

7. At its regular session in 1933 the General Assembly of the State of Indiana passed an act entitled "An Act to provide for the raising of public revenue by imposing a tax upon the receipt of gross income, to provide for the ascertainment, assessment and collection of said tax, and to provide penalties for the violation of the terms of this act, and declaring an emergency", which act was approved and became a law on February 27, 1933, and by its terms took effect and was in force from and after the first day of May, 1933, and is published as Chapter 50 at page 388 of the Acts of 1933, and is known and cited as the "Gross Income Tax Act of 1933."

8. Said gross income tax act of 1933 purports, among other things, to impose a tax upon the entire gross income [fol. 12] (as the term "gross income" is defined in Section 1

of the act) of all residents of the State of Indiana, which tax shall apply to, and be levied and collected upon, all gross income received on or after the first day of May, 1933, with such exceptions and limitations as are in the act provided.

The rates of the tax imposed by said act are, in general terms, as follows: (a) upon the entire gross income of every person engaged in the business of manufacturing, a tax at the rate of one-fourth of one per cent; (b) upon the entire gross income of every person engaged in the business of wholesaling or jobbing, a tax at the rate of one-fourth of one per cent; (c) upon the entire gross income of every person engaged in the business of retailing, a tax at the rate of one per cent; (d) upon the entire gross income of every person engaged in the business of operating a public utility, a tax at the rate of one per cent (e) upon the entire gross income of every person engaged in the business of operating any bank, finance company or other business of a similar nature, a tax at the rate of one per cent; (f) upon the gross income of all persons not enumerated above and upon all receipts from any source whatsoever, a tax at the rate of one per cent; all as set forth more specifically and in detail in Section 3 of said Act. In computing such tax, each taxpayer is allowed a deduction from gross income of One Thousand Dollars (\$1,000).

[fol. 13] The tax is computed by quarterly periods ending on the last day of March, June, September and December in each year; and unless otherwise ordered by the Department of Treasury each taxpayer liable for a total tax exceeding Ten Dollars (\$10) for the preceding quarter is required to file a return within fifteen days after the end of each quarter, the first return being required to be made on or before the 15th day of July, 1933, covering the period from May 1 to June 30, 1933.

The tax is required to be paid with the filing of the return. In the event that a tax less than the tax found by the Department to be due is paid the taxpayer is bound to pay the balance with interest at the rate of one per cent per month from the time the tax was due. If the deficiency in the amount of tax is due to negligence or intentional disregard of the rules and regulations of the Department of Treasury, but without intent to defraud, there is then added a penalty to ten per cent of the total amount of the deficiency in tax and interest at the rate of one per cent

per month from the time the tax was due. If the deficiency was due to fraud, with intent to evade the tax, then there is added as a penalty fifty per cent of the total amount of the deficiency with interest at one per cent per month.

The act requires every person subject to the tax to keep and preserve suitable records of his gross income and such other books or accounts as may be necessary to determine the amount of the tax, and it is made the duty of each person to keep and preserve such records for a period of two years open for examination at any time by the Department [fol. 14] of Treasury or its duly authorized agents.

If any taxes imposed are not paid within sixty days after the same are due, the Department of Treasury may issue a warrant directing the Sheriff to levy and sell the real and personal property of the person owing the tax. Any person against whom a tax shall be assessed may be restrained and enjoined upon [the]* order of the Department of Treasury by proceedings instituted in the name of the State of Indiana by the Attorney General or any Prosecuting Attorney from engaging and continuing in business until the tax shall have been paid and until such person shall have complied with the provisions of the act.

9. Section 6 (a) of said gross income tax act of 1933 provides that so much of a taxpayer's gross income as is derived from business conducted in commerce between the State of Indiana and other states of the United States, or between the State of Indiana and foreign countries, shall be excepted from taxation to the extent to which the State of Indiana is prohibited from taxing the same under the Constitution of the United States. Defendants and each of them are asserting that the Constitution of the United States does not in any way prohibit the levying of a tax upon gross income derived from business conducted in commerce between the State of Indiana and other states of the United States or between the State of Indiana and foreign countries, and that plaintiff is required to file a return, and is liable to pay a tax at the rate prescribed in said act, upon the entire gross income of plaintiff, including that [fol. 15] derived from interstate and foreign commerce as set forth in paragraphs 4 (a), 4 (b) and 4 (c) of this complaint.

* [Matter enclosed in brackets, struck out in copy.]

Plaintiff says that under the Constitution of the United States, the State of Indiana is prohibited from levying a tax upon the gross income derived from plaintiff's commerce between the State of Indiana and other states of the United States, and from levying a tax upon gross income derived from plaintiff's commerce between the State of Indiana and foreign countries; and, without the consent of Congress, from laying any duties on articles exported by plaintiff to foreign countries, as set out in paragraphs 4 (a), 4 (b) and 4 (c) hereof, and that the true intent of the General Assembly of Indiana in enacting said gross income tax act, and especially Section 6 (a) thereof, was to exempt from taxation as a part of the gross income of any taxpayer, the gross income derived from interstate and foreign commerce.

Plaintiff further says that if said act, when construed according to its true intent, imposes a tax on the gross income of plaintiff derived from its business conducted as set forth in paragraphs 4 (a), 4 (b) and 4 (c) hereof, then said act is invalid and void for the reason that such tax constitutes a regulation of and a burden upon interstate and foreign commerce, and a duty upon exports without the consent of Congress, and is in violation of Section 8 and Section 10 of Article I of the Constitution of the United States. For the foregoing reasons the defendants and each of them are without authority to require plaintiff [fol. 16] to file a return or to pay a tax upon the gross income derived from its business conducted as set forth in paragraphs 4 (a), 4 (b) and 4 (c) of this complaint, but defendants nevertheless are now asserting such right and declaring their intention to collect such tax.

10. Section 6 (c) of said gross income act of 1933 provides that so much of taxpayer's gross income as is derived from sales to the United States Government, its department or agencies, shall be excepted from taxation to the extent to which the State of Indiana is prohibited from taxing the same under the Constitution of the United States. Defendants and each of them are asserting that the Constitution of the United States does not in any way prohibit the levying of a tax upon gross income derived from sales to the United States Government, its departments or agencies, and that plaintiff is required to file a return and is liable to pay a tax at the rate prescribed in said act, upon

the entire gross income of plaintiff, including that derived from sales to the United States Government, its departments or agencies, as set forth in paragraph 4 (d) of this complaint.

Plaintiff says that under the Constitution of the United States, the State of Indiana is prohibited from levying a tax upon the gross income derived from plaintiff's sales to the United States Government, its departments or agencies, as set out in paragraph 4 (d) hereof, and that the true intent of the General Assembly of Indiana is enacting said [fol. 17] gross income act, and especially Section 6 (c) thereof, was to exempt from taxation as a part of the gross income of any taxpayer, the gross income derived from sales to the United States Government, its departments or agencies.

Plaintiff further says that if said act, when construed according to its true intent, imposes a tax on the gross income of plaintiff derived from its sales to the United States Government, its departments or agencies, as set forth in paragraph 4 (d) hereof, then said act is invalid and void for the reason that such tax constitutes a regulation of and a burden upon the powers and functions of the United States Government and is in violation of the Constitution of the United States, and particularly of Section 8 of Article 1 thereof. For the foregoing reasons the defendants and each of them are without authority to require plaintiff to file a return or to pay a tax upon the gross income derived from its business conducted as set forth in paragraph 4 (d) of this complaint, but defendants nevertheless are asserting such right and declaring their intention to collect such tax.

11. Plaintiff says that said gross income act of 1933 is invalid and void to the extent that a tax is levied upon (a) that part of the gross income of plaintiff which is derived from interest upon the tax exempt bonds, notes and other evidences of indebtedness of municipal corporations within the State of Indiana and each of them described in paragraph 5 of this complaint; (b) upon that part of the gross income of plaintiff which represents funds received upon maturities of any of such tax exempt obligations [fol. 18] described in paragraph 5 of this complaint; and (c) upon that part of the gross income of plaintiff which is derived from the sale of any of such tax exempt

obligations described in paragraph 5 of this complaint; for the reason that the tax upon such gross income impairs the obligation of the contracts existing between plaintiff and each of the municipalities or political subdivisions which issued the obligations, and in such respect, said act is in conflict with Section 10 of Article 1 of the Constitution of the United States and with Section 24 of Article 1 of the Constitution of Indiana.

12. Plaintiff further says that said gross income tax act of 1933 is invalid and void to the extent that a tax is levied upon that part of the gross income of plaintiff which is derived from interest upon the ~~tax exempt~~ bonds of the Fletcher Joint Stock Land Bank as described in paragraph 6 of this complaint, for the reason that the tax upon such gross income constitutes a tax upon an instrumentality of the United States and also impairs the obligation of the contract existing between the plaintiff and the issuer of said bonds, and in such respect said act is in conflict with Sections 8 and 10 of Article 1 of the Constitution of the United States and with Section 24 of Article 1 of the Constitution of Indiana.

13. Plaintiff's business is that of manufacturing, and the sale of its products is only an incident to such business. Plaintiff is not engaged in the business of wholesaling or jobbing as defined in Section 3 (b) of the act, nor in the [fol. 19] business of retailing as defined in Section 3 (c) but is engaged only in the business of manufacturing as defined in Section 3 (a) of the act; and under said section, plaintiff's gross income is taxable only at the rate of one-fourth of one per cent, and no part of such gross income whether derived from the sale of products in quantities to dealers or distributors, or from the sale of single units to purchasers who are ultimate users of the same, is taxable at any other rate than that provided in said Section 3 (a) of the Act. Notwithstanding the aforesaid defendants and each of them are asserting the right to require the plaintiff to file a return and pay a tax under Section 3(c) of said gross income tax act at the rate of one per cent upon that part of plaintiff's gross income which is derived from sales of its products to purchasers who are the ultimate or users thereof.

14. Since the first day of May, 1933, when said gross income tax act became effective, the defendants and each

of them have been and are promulgating rules and regulations for the making of returns and for the ascertainment, assessment and collection of the tax imposed under such act, and have been and are issuing instruments and directions to plaintiff and other taxpayers as to the returns to be filed and the extent of the taxes to be paid by them under said act. In connection with and pursuant to such rules, regulations, instructions and directions, defendants have been and are now demanding that plaintiff file its return, and pay the taxes asserted by defendants to be collectible upon gross income received by plaintiff since May [fol. 20] 1, 1933, and to be received by it during the current and succeeding taxable periods, as follows:

- (a) Upon the gross income received by plaintiff in interstate and foreign commerce conducted as set forth in paragraphs 4 (a), 4 (b) and 4 (c) and referred to in paragraph 9 of this complaint;
- (b) Upon the gross income received by plaintiff from sales of its products to the United States Government, its departments or agencies;
- (c) Upon the gross income received by plaintiff from tax exempt securities, including interest collected thereon, principal collected on payment at maturity and proceeds from the sale of such securities as set forth in paragraphs 5 and 6 and referred to in paragraphs 11 and 12 of this complaint;
- (d) Upon the gross income of all sales of products by the plaintiff, at the rate of one per cent provided in Section 3 (c) of said act, where the purchaser is the ultimate user thereof, as set forth in paragraphs 4 (b) and 4 (e) and referred to in paragraph 13 of this complaint;

and [that]* said defendants and each of them have determined to enforce their said demands upon the plaintiff, and unless prevented by judgment and decree of this Court, will proceed to enforce such demands to the extent of invoking and inflicting the various civil and penal provisions of said act if plaintiff shall fail to comply with such demand.

[fol. 21] 15. Plaintiff says that, by reason of the declared intention and determination of defendants to levy and col-

* [Matter enclosed in brackets struck out in copy.]

lect taxes upon all portions of the entire gross income of plaintiff in the manner and to the extent hereinabove alleged, and the contention of plaintiff as hereinabove stated that such levy and collection of the taxes claimed by defendants upon certain portions of plaintiff's gross income hereinabove referred to will be unlawful and invalid, an actual controversy exists between the plaintiff in its own behalf and in behalf of other taxpayers similarly situated and the defendants hereto; and that it is necessary in order to protect the rights of plaintiff and others similarly situated that the rights, status and legal relations of the plaintiff and of the defendants to this proceeding in respect to the subject matter hereof be determined and declared by this Court.

Wherefore plaintiff prays:

1. That this Court cause summons to be served upon each of the several defendants hereinabove named, and also cause a copy of this complaint to be served upon the Attorney General of the State of Indiana, fixing a time when the parties defendant and said Attorney General may be heard.
2. That this Court determine, adjudge and decree that said gross income tax of 1933 does not require the levy and collection of a tax upon gross income derived from interstate or foreign commerce as conducted by the plaintiff; or if such act be construed to require the levy and collection of [fol. 22] such tax, then that the Court determine, adjudge and decree that said act is unconstitutional and void in so far as it applies to gross income derived from business conducted by the plaintiff in interstate and foreign commerce.
3. That this court determine, adjudge and decree that said gross income act of 1933 does not require the levy and collection of a tax upon gross income derived from sales by the plaintiff of its products to the United States Government, its departments or agencies; or if such act be construed to require the levy and collection of such tax, then that the Court determine, adjudge and decree that said act is unconstitutional in so far as it applies to gross income of the plaintiff derived from its sales to the United States Government, its departments or agencies.
4. That this Court determine, adjudge and decree that said gross income tax act is unconstitutional and void in so far as it requires the plaintiff to pay a tax upon that part

of its gross income derived from interest, principal or proceeds from the sale of securities which are by prior statutes declared to be exempt from taxation or to be instrumentalities of the United States.

5. That this Court determine, adjudge and decree that no tax is collectible from the plaintiff, as a person engaged in the business of Manufacturing upon any part of its gross [fols. 23-24] income at a rate in excess of one-fourth of one per cent as provided in Section 3(a) of said Act.

6. And that this Court grant to plaintiff all other proper relief in the premises.

Frederick E. Matson, Attorney for Plaintiff.
 Schortemeier, Eby & Wood, Bamberger & Feibleman, Baker & Daniels, White, Wright & Boleman, Matson, Ross, McCord & Clifford, of Counsel.

[fol. 25] IN SUPERIOR COURT OF MARION COUNTY

SUMMONS AND RETURN

STATE OF INDIANA,
 Marion County, ss:

The State of Indiana, to the Sheriff of Marion County,
 Greeting:

You are hereby commanded to summon William Storen, as Chief Administrative Officer of the Department of Treasury of the State of Indiana, (242 State House, Indianapolis); Department of Treasury of the State of Indiana (Serve upon William Storen, 242 State House, Indianapolis); Paul V. McNutt, William Storen and Floyd E. Williamson, as and constituting the Board of Department of Treasury of the State of Indiana, (State House, Indianapolis); Philip Lutz, Jr. as Attorney General of the State of Indiana (219 State House, Indianapolis) Serve also copy of complaint upon Attorney General; to appear before the Judge of the Superior Court of Marion County, Indiana, on the 23rd day of June, 1933, being the 17th Judicial Day of the June Term, 1933, of said Court, which term commence at the Court House in the City of Indianapolis on the first Monday in said month and year last above named then and there to an-

sver the complaint of J. D. Adams Manufacturing Company and have you then and there this writ.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Superior Court, at my office in the City of Indianapolis, the 10th day of June, 1933.

Glen B. Ralston, Clerk Superior Court of Marion County. (Seal.)

[fols. 26-27] Came to hand June 10, 1933 and served the within named Department of Treasury of the State of Indiana by reading this writ to, and within the hearing of William Storen, Chief Officer of said Department and delivering to him a true copy thereof.

Charles L. Summer, Sheriff of Marion County, June 12, 1933, Per John Brewington, Deputy

and served this writ by reading to and within the hearing of the within named William Storen as Chief Administrative officer of the Department of Treasury of the State of Indiana Paul V. McNutt, William Storen, Floyd E. Williamson, as and constituting the Board of Department of Treasury of the State of Indiana, Philip Lutz, Jr. as attorney General of the State of Indiana; also by serving copy of Complaint upon said Philip Lutz and delivering to them a true copy of the same.

Charles L. Summer, Sheriff of Marion County, June 12, 1933, Per John Brewington, Deputy.

[fols. 28-29]. IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

APPEARANCE OF COUNSEL FOR DEFENDANTS—Filed June 17, 1933

The undersigned hereby enter their Appearance for all of the defendants in the above entitled cause.

Philip Lutz, Jr., Attorney General; Fred A. Wiecking, Asst. A. G.; Joseph P. McNamara, Deputy A. G.

Address 219 State House. Phone Li. 3127.

[fols. 30-31] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

DEFENDANTS' ANSWER—Filed June 17, 1933

The defendants, for answer to the complaint herein, deny each and all of the allegations thereof.

Philip Lutz, Jr., Attorney General; Fred A. Wiecking, First Assistant Attorney General; Joseph L. McNamara, Deputy Attorney General, Attorneys for Defendants.

[fol. 32] IN SUPERIOR COURT OF MARION COUNTY

FINDING OF COURT—June 28, 1933

Comes now plaintiff in the above entitled cause by Frederick E. Matson, Austin V. Clifford, Harry T. Ice, Frederick E. Shortemeier, Warrack Wallace, Ralph Bamberger and Burrell Wright, its attorneys, and the defendants by Philip Lutz, Jr., Attorney General of the State of Indiana, Fred A. Wiecking, First Assistant Attorney General, and Joseph P. McNamara, Deputy Attorney General, and all of the parties named as defendants in the complaint having been duly served with summons and all said defendants having appeared and filed their several answers in general denial, and this cause being now submitted for trial without the intervention of a jury, and a stipulation of facts agreed to by all of the parties having been offered and received in evidence in lieu of oral testimony, said stipulation constituting all of the evidence in the case, and the Court, having heard the arguments of counsel and being duly advised in the premises, now finds for the plaintiff that the allegations of the complaint and the facts set forth in the stipulation are true; that a controversy exists between the plaintiff and defendants involving the rights, status and legal relations of the parties to this cause in respect to each of the situations described in the complaint and to the interpretation or validity of certain provisions of an Act of the General Assembly of the State of Indiana entitled "An Act to provide [fol. 33] for the raising of public revenue by imposing a tax upon the receipt of gross income, to provide for the ascertainment, assessment and collection of said tax, and to pro-

vide penalties for the violation of the terms of this act, and declaring an emergency", which was approved and became a law on February 27, 1933, and by its terms took effect and was in force from and after the first day of May 1933, and is published as Chapter 50, page 388, of the Acts of 1933, and is known and cited, and hereafter in this finding and decree referred to as the "Gross Income Tax Act of 1933"; that the rights, status and legal relations of plaintiff and of all other taxpayers citizens and residents of Indiana and elsewhere who are similarly situated are affected by such Act; that the parties hereto are entitled to have their respective rights under the various provisions of said act referred to in plaintiff's complaint declared by this Court pursuant to the provisions of the Uniform Declaratory Judgment Act of Indiana; and further finds as follows:

(a) The Court finds for the plaintiff that the plaintiff is engaged in the business of manufacturing and has its only factory and its home office in the City of Indianapolis, Indiana; that plaintiff sells part of its products to independent distributors located in various states other than the State of Indiana, who are not agents of the plaintiff or subject to its control, and who resell said products to their own customers; that plaintiff also sells part of its products to purchasers located in states other than Indiana through agents of the plaintiff who solicit and take orders in said states for such products; that plaintiff also sells a part of its products to purchasers in foreign countries; that all such products are sold only upon orders approved at the home office of the plaintiff, and are shipped from plaintiff's factory direct to the purchasers in such other states and foreign countries; that all payments for plaintiff's products are made to plaintiff at its home office; and that the gross income of plaintiff from products so sold and shipped direct to customers in other states and foreign countries constitutes approximately eighty per cent of plaintiff's entire gross income; that to the extent plaintiff makes sales as aforesaid, plaintiff is engaged in commerce among the several states and with foreign nations and in exporting goods to foreign countries; and that said Gross Income Tax Act of 1933 does not by any of its terms or provisions authorize or require the assessment or collection of any tax upon the gross income derived by the plaintiff, or others similarly

situated, from business so conducted in commerce between the State of Indiana and other states of the United States or between the State of Indiana and foreign countries, but such gross income is by said act expressly excepted from [fol. 35] such tax.

(b) The Court finds for the plaintiff that plaintiff sells a part of its products to the Government of the United States, its departments or agencies, and that said Gross Income Tax Act of 1933 does not by any of its terms or provisions authorize or require the assessment or collection of any tax upon the gross income derived by the plaintiff, or others similarly situated, from sales of its products to the United States Government, its departments or agencies, but such gross income is by said act expressly excepted from such tax.

(c) The Court finds for the plaintiff that on and subsequent to May 1, 1933 plaintiff was the owner and holder of bonds, notes and other evidence of indebtedness issued by various municipal corporations within the State of Indiana, which bonds, notes and other evidences of indebtedness were issued prior to the date when said Gross Income Tax Act of 1933 became effective, and all of which bear interest, and all of which by the statutes of Indiana in force now and at the time of the issuance of said bonds are declared to be exempt from taxation; and that in so far as said Gross Income Tax Act of 1933 purports or attempts to impose or collect any tax upon gross income derived by the plaintiff from such tax exempt securities, either in the form of interest collected thereon, principal collected on [fol. 36] payment at maturity or proceeds from the sale of such securities, said act impairs the obligation of contract arising on such securities, contrary to the Constitution of the State of Indiana and the Constitution of the United States, and to such extent is invalid and void.

(d) The Court finds for the plaintiff that on and subsequent to May 1, 1933 plaintiff was the owner and holder of certain Joint Stock Land Bank bonds which were issued pursuant to an act of the Congress of the United States which became a law July 17, 1916, and are by said Act declared to be instrumentalities of the United States and both as to principal and interest exempt from federal, state, municipal and local taxation, and that said Gross Income Tax Act of 1933 does not by any of its terms or provisions

authorize or require the assessment or collection of any tax upon the gross income derived by the plaintiff, or others similarly situated, from such securities in the form of interest collected thereon, but such gross income is by said Act expressly excepted from such tax.

(e) The Court finds for the plaintiff that plaintiff is engaged in the business of manufacturing and sells a portion of its products to purchasers who are the ultimate users thereof, but such sale of its products is only an incident to such business of manufacturing; that plaintiff does not at its factory or home office, or at any other place, maintain or operate any store, salesroom or other establishment for [fol. 37] the business of wholesaling or retailing its products, or from which sales are made but all of its products are sold only on orders accepted and approved at its home office; that plaintiff is not engaged in the business of wholesaling or jobbing as defined or referred to in Section 3 (b) of said Gross Income Tax Act of 1933, nor in the business of retailing as defined or referred to in Section 3 (c) of said act, but is engaged only in the business of manufacturing as defined or referred to in Section 3 (a) of said act; and that said Gross Income Tax Act of 1933 does not by any of its terms or provisions authorize or require the assessment, levy or collection of any tax upon the gross income derived by the plaintiff, or others similarly situated, from sales of its products so made by plaintiff to purchasers who are the ultimate users of such products, at any other rate than that provided in said section 3 (a) of said Act.

JUDGMENT

Now therefore:

1. It is Declared, Ordered, Adjudged and Decreed that said Gross Income Tax Act of 1933 does not authorize or require the levy and collection of a tax upon gross income derived by the plaintiff, or others similarly situated, from business conducted in commerce between this state and other states of the United States or between this state and foreign countries, and that the defendants have no right, [fol. 38] authority or power to impose, assess or collect any tax upon gross income derived by the plaintiff, or others similarly situated from business conducted in commerce be-

tween this state and other states of the United States or between this state and foreign countries, and that defendants have no right, authority or power to impose, assess or collect any tax on gross income derived by the plaintiff, or others similarly situated, from sales made as stated above in paragraph (a) of this finding and decree.

2. It is Further Declared, Ordered, Adjudged and Decreed, that said Gross Income Tax Act of 1933 does not authorize or require the levy and collection of a tax upon gross income derived by the plaintiff, or others similarly situated, from sales of products to the United States Government, its departments or agencies, and that the defendants have no right, authority or power to impose, assess or collect any tax upon the gross income derived by the plaintiff, or others similarly situated, from sales to the United States Government, its departments or agencies.

3. It is Further Declared, Ordered, Adjudged and Decreed that said Gross Income Tax Act of 1933 is unconstitutional and void in so far as it requires the plaintiff, or others similarly situated, to pay a tax upon that part of its gross income derived either from interest received on, [fol. 39] principal received on payment at maturity of, or proceeds received from sale of, bonds, notes or other evidences of indebt-ness issued prior to May 1, 1933 by municipal corporations of the State of Indiana, and which are declared by the statutes of Indiana to be exempt from taxation; and that the defendants have no right, authority or power to impose, assess or collect any tax upon gross income derived by the plaintiff, or others similarly situated, from any such securities.

4. It is Further Declared, Ordered, Adjudged and Decreed, that said Gross Income Tax Act of 1933 does not authorize or require the assessment and collection of a tax upon gross income derived by the plaintiff, or others similarly situated, from interest collected on Joint Stock Land Bank bonds or on other securities issued by instrumentalities of the United States, and that the defendants have no right, authority or power to impose, assess or collect any tax upon gross income derived by the plaintiff, or others similarly situated from any such source.

5. It is Further Declared, Ordered, Adjudged and Decreed, that said Gross Income Tax Act of 1933 does not

authorize or require the assessment or collection of a tax at any rate other than the rate imposed on the gross income of persons engaged in the business of manufacturing as specified in Section 3 (a) of said act, upon gross income [fol. 40-41] derived by the plaintiff, or others similarly situated, from sales of its products to purchasers who are the ultimate users thereof, as stated in paragraph (e) of this finding and decree, and that the defendants have no right, authority or power to impose, assess or collect any tax upon the gross income derived by the plaintiff, or others similarly situated, from any such sales so made to purchasers who are the ultimate users of such products, except at the rate specified in Section 3 (a) of said act, to-wit: at one-fourth of one per cent.

6. It is Further Declared, Ordered, Adjudged and Decreed by the Court that plaintiff have and recover of the defendants its costs in this action laid out and expended taxed at \$—.

All of which is finally declared, ordered, adjudged and decreed by the Court.

Dated, June 28th, 1933.

(Signed) Russell J. Ryan, Judge of the Marion Superior Court, Room 5.

[fol. 42] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

DEFENDANTS' MOTION FOR A NEW TRIAL—Filed June 30, 1933

The defendants in the above entitled cause, and each of them separately and severally, move the court for a new trial on each of the following grounds to-wit:

1. The decision of the court is not sustained by sufficient evidence.
2. The decision of the court is contrary to law.

Wherefore, the defendants, and each of them separately [fol. 43] and severally, pray the court for a new trial in the said cause.

Philip Lutz, Jr., Attorney General of Indiana; Fred W. Weicking, Assistant Attorney General; Joseph L. McNamara, Deputy Attorney General, Attorneys for Defendants.

[fol. 44] IN SUPERIOR COURT OF MARION COUNTY

ORDER OVERRULING MOTION FOR NEW TRIAL, ETC.

And the court being duly advised in the premises, overrules the joint and several motions for a new trial heretofore filed in said cause by the defendants, to which ruling of the court the said defendants and each of them separately and severally at the time excepts. Thereupon said defendants and each of them pray an appeal to the Supreme Court of Indiana, and an appeal is granted said defendants as prayed. Said defendants and each of them ask and are given ninety (90) days in which to file all Bills of Exceptions.

[fol. 45]

[File endorsement omitted]

IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

PRÆCIPICE FOR TRANSCRIPT OF RECORD

To the Clerk of the Marion Circuit Court as ex-officio, Clerk of the Marion Superior Court:

The Clerk is directed to prepare and certify for use on appeal to the Supreme Court of Indiana a transcript of all papers filed in said cause, including the complaint, answer and agreed stipulation of facts, all orders and rulings, and the finding, decree and judgment rendered therein.

William Storen, as Chief Administrative Officer of the Department of Treasury of the State of Indiana, Department of Treasury of the State of Indiana; Paul V. McNutt, William Storen, Floyd E. Williamson, as and Constituting the Board of Department of Treasury of the State of Indiana; Philip Lutz, Jr., as Attorney-General of the State of Indiana, by Philip Lutz, Jr.; Attorney General; Fred A. Wiecking, Assistant Attorney General; Joseph L. McNamara, Deputy Attorney General, Attorneys for Defendants.

[fol. 47] IN SUPERIOR COURT OF MARION COUNTY, JUNE TERM,
1933, ROOM NO. 5

No. A-72605

[Title omitted]

Bill of Exceptions—Filed September 30, 1933

Be it Remembered, That on the 26th day of June, 1933, the same being the 19th judicial day of the June Term, 1933, of the Superior Court of Marion County, State of [fol. 48] Indiana, Room No. 5, the following proceedings were had in the above entitled cause, before the Honorable Russell J. Ryan, Judge of said Court, to-wit:

The cause being at issue, the same came on for trial before the Court, without the intervention of a jury, Messrs. Schortemeier, Eby & Wood, Bamberger & Feibleman, Baker & Daniels, White, Wright & Boleman, and Matson, Ross, McCord & Clifford appearing as counsel for the Plaintiff, and Philip Lutz, Jr., Attorney General of the State of Indiana, appearing as counsel for the Defendants.

And be it Further Remembered, That before the trial was begun, for the purpose of facilitating and expediting the trial of said cause, said Judge required to be present, Lillian E. Sandstrom, Official Reporter of said court, to take down in shorthand the oral evidence, including both questions and answers, and note all rulings of the Judge in respect to the admission and rejection of evidence, and the exceptions taken thereto, and the documentary evidence offered and introduced on the trial of said cause, the said Lillian E. Sandstrom having been, at the time of her appointment, duly sworn to faithfully perform her duties as such official shorthand reporter, which said appointment and her official oath as such Reporter are of and among the records of said court.

And be it Further Remembered, That said Official Reporter was present and took down in shorthand the oral [fol. 49] and documentary evidence given and offered upon the trial of said cause, including both questions and answers, and noted all the objections made to the admission of evidence, all of the rulings of the Court with respect to the admission and rejection of evidence, and the exceptions taken thereto.

And the said Defendants, having requested said Official Reporter to furnish them with a complete transcript of said evidence, objections, rulings of the Court thereon, and the exceptions taken thereto, including all documentary evidence, a typewritten transcript of the same was made by said Official Reporter, which Typewritten Transcript is in the Words and Figures Following, That is to Say:

[fol. 50] The Plaintiff, to maintain the issues on its behalf, offered and introduced the following evidence, to-wit:

Exhibit No. 1, was offered and read in evidence, and made a part of the record in this case, and is in the words and figures following, to-wit:

EXHIBIT No. 1

IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

[fol. 51]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the facts herein-after set forth shall be considered as facts proven under the issues in the cause, with the same force and effect as though established by competent evidence introduced on the trial, and shall constitute the facts upon which this cause shall be determined, viz:

1. Plaintiff, J. D. Adams Manufacturing Company, is a corporation duly organized and existing under the laws of the State of Indiana, having its manufacturing plant, home office and principal place of business at Indianapolis, Marion County, Indiana.

2. Defendant William Storen is the duly elected, qualified and acting Treasurer of the State of Indiana, and as such is the chief administrative officer of the Department of Treasury of the State of Indiana, and as such Treasurer is also a member of the Board of Department of Treasury of the State of Indiana.

Defendant Paul V. McNutt is the duly elected, qualified and acting Governor of the State of Indiana and as such is a member of the Board of Department of Treasury of the State of Indiana. Defendant Floyd E. Williamson is a

duly appointed, qualified and acting member of the Board of Department of Treasury of the State of Indiana. The defendants Paul V. McNutt, William Storen and Floyd E. [fol. 52] Williamson together constitute the Board of Department of Treasury of the State of Indiana and as such are in charge of the Department of Treasury of the State of Indiana.

Defendant Philip Lutz, Jr., is the duly elected, qualified and acting Attorney General of the State of Indiana.

Defendants are the state officials charged with the duty of administering and enforcing the gross income tax act of 1933 hereinafter referred to, and of assessing, levying and collecting the taxes provided for therein.

3. Plaintiff is the owner of real and personal property located in said city and State and pays taxes levied thereon for state, municipal and local purposes; and if the certain law enacted by the General Assembly of the State of Indiana at its regular session held in 1933, known as the "Gross Income Tax Act of 1933" (Chapter 50 Acts 1933, page 388), hereinafter referred to, be valid and enforceable in any of its provisions as applied to the plaintiff, plaintiff will also be compelled to pay such taxes as are levied and assessed against it by the defendants in such amounts and in such manner as said act shall be construed and applied to the plaintiff by said defendants; and plaintiff brings this action in its own behalf and in a representative capacity in behalf of all other taxpayers, citizens and residents of Indiana or elsewhere who are similarly [fol. 53] situated.

4. Plaintiff is engaged in the business of manufacturing various kinds of machinery, tools, appliances and equipment for the construction, improvement, working, repair and maintenance of roads and highways. Plaintiff's only factory is located at Indianapolis in the State of Indiana. Plaintiff, as a manufacturer engaged in the business aforesaid, sells and disposes of its various products within the State of Indiana, and in other states and territories of the United States and in foreign countries, as follows:

(a) Plaintiff sells a substantial part of its products in quantities to independent distributors located in various states other than the State of Indiana. Such distributors resell said products to their own customers. Such distribu-

tors are not the agents of the plaintiff nor are they subject to plaintiff's control, but are in each case engaged in business on their own account as independent dealers. The products so sold to distributors are shipped from plaintiff's factory direct to such distributors in other states upon orders approved at the home office of plaintiff. Plaintiff also ships its products upon orders of the distributor, approved at the home office of plaintiff, direct from plaintiff's factory to purchasers from the distributor, all such shipments being made to states other than Indiana. Payments for all such products are made by the distributors direct [fol. 54] to the plaintiff at its home office in Indianapolis.

Since the first day of May, 1933, when the gross income tax law hereinafter referred to became effective, plaintiff has sold and delivered products to independent distributors and to purchasers from such distributors in the manner above stated, the entire gross income from which will be in excess of Fifteen Thousand Dollars (\$15,000), of which the sum of Ten Thousand Six Hundred Sixty-two and 63/100 Dollars (\$10,662.63) has been collected and received, and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further large quantities of its products in the manner aforesaid, and will during the current and succeeding taxable periods collect and receive further gross income therefrom in a substantial sum, the exact amount of which can not now be determined.

(b) Plaintiff sells a substantial part of its products to purchasers located in states other than Indiana through agents of the plaintiff who solicit and take orders in such states for said products. All such sales are made upon orders subject to approval at the home office of Plaintiff, and such products are shipped from plaintiff's factory direct to the purchasers in other states. Payments for said products are made to plaintiff at its home office in Indianapolis. A portion of such sales are to ultimate users, and [fol. 55] a portion of such sales are in quantities to dealers who resell such products.

Since the first day of May, 1933, plaintiff has sold and delivered products in the manner above stated to customers outside the State of Indiana, the entire gross income from which will be in excess of Five Thousand Dollars (\$5,000), of which the sum of \$1,453.84 has been collected and re-

ceived, and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further large quantities of its products in the manner aforesaid and will during the current and succeeding taxable periods collect and receive further gross income therefrom in substantial sums, the exact amount of which can not now be estimated.

Of the total amount of gross income received or to be received from sales to purchasers outside the State of Indiana in the manner aforesaid, an amount in excess of One Thousand Dollars (\$1,000) has been received from purchasers who are ultimate users of the products sold to them.

(c) Plaintiff sells a substantial part of its products through its agents, on orders subject to approval at its home office, to purchasers in the Dominion of Canada and other foreign countries. All products so sold are shipped from plaintiff's factory direct to the purchasers in such foreign countries, and payment is made therefor at the [fol. 56] home office of the plaintiff in Indianapolis.

Since the first day of May, 1933, plaintiff has sold and delivered products to foreign countries as above described, the entire gross income from which will be in excess of One Thousand Five Hundred Dollars (\$1,500), of which the sum of \$1,385.00 has been collected and received, and the remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further large quantities of its products in the manner aforesaid and will during the current and succeeding taxable periods collect and receive further gross income therefrom in a substantial sum, the exact amount of which can not now be estimated.

(d) Plaintiff sells a part of its products through its agents to the Government of the United States, its departments or agencies, on orders approved at the home office of the plaintiff. Such products so sold are delivered to the United States Government, its departments or agencies in the various states of the United States, including the State of Indiana, as instructed by the Government at the time of sale.

Since the first day of May, 1933 plaintiff has sold and delivered products to the United States Government as

above stated, the entire gross income from which will be in excess of Two Thousand Dollars (\$2,000), of which the sum of \$1,509.12 has been collected and received and the [fol. 57] remaining part will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further quantities of its products in the manner aforesaid and will during the current and succeeding taxable periods collect and receive further gross income therefrom in a substantial sum, the exact amount of which can not now be estimated.

(e) Plaintiff sells a substantial portion of its products, and delivers the same direct from its factory, to purchasers within the State of Indiana. A portion of said products so sold in Indiana is sold to purchasers who are the ultimate users thereof, and the remaining portion thereof is sold to independent dealers who resell the same in Indiana and other states and foreign countries.

Since the first day of May, 1933, plaintiff has sold and delivered products in the manner above stated, the entire gross income from which will be in excess of Thirty-five Thousand Dollars (\$35,000), of which the sum of \$13070.53 has been collected and received and the remaining portion of which will be collected and received as the same falls due; and plaintiff expects to and will in the regular course of its business sell further quantities of its products in the manner aforesaid and will during the current and succeeding taxable periods collect and receive further gross income therefrom in a substantial sum, the exact amount of which can not now be estimated.

[fol. 58] Of the total amount of gross income received or to be received from sales to purchasers within the State of Indiana, in the manner aforesaid; an amount in excess of \$3176.53 has been received from purchasers who are ultimate users of the products sold to them.

(f) Plaintiff has each year during the four years immediately preceding the filing of this complaint received as gross income derived from its business conducted in interstate and foreign commerce, as above described in subparagraphs (a), (b) and (c) of paragraph 4 of this stipulation, an amount materially in excess of One Million Dollars, which gross income represents approximately eighty per cent of the entire gross income received by the plaintiff

from all sales of its products; and plaintiff estimates that its gross income from sales of its products made interstate and foreign commerce will continue to be a substantial portion of its entire gross income each year.

5. Plaintiff during certain seasons each year when all of its working capital is not represented in raw materials, work in process or completed products, regularly invests for temporary periods a substantial portion of its working capital in bonds, notes and other evidences of indebtedness issued by municipal corporations within the State of Indiana; all of which bonds, notes and other evidences of indebtedness bear interest, and by the statutes of Indiana in [fol. 59] force now and at the time of issuance of such bonds (being Section 6 of an Act entitled "An Act concerning taxation, repealing all laws in conflict therewith and declaring an emergency, approved March 11, 1919", as amended by Chapter 191, Acts of 1923; Section 14037 Burns Indiana Statutes 1926) are declared to be exempt from taxation. When the business of plaintiff requires the return of such working capital to its manufacturing operations, such non-taxable securities are sold and converted into cash.

Plaintiff had acquired prior to February 27, 1933, and had in its possession on May 1, 1933, securities of the character above described, representing an investment of working capital of the plaintiff in excess of Two Hundred Thousand Dollars (\$200,000). Since the first day of May, 1933, plaintiff has collected and received as interest earned and payable on such non-taxable obligations a total sum in excess of Two Thousand Five Hundred Dollars (\$2,500). Since the first day of May, 1933, plaintiff has also collected and received as principal paid by the issuer at maturity of such non-taxable obligations a total sum in excess of One Hundred Thousand Dollars (\$100,000.). Since May 1, 1933, plaintiff also has sold various of such nontaxable obligations for the purpose of converting them into cash for working capital, and from such sales has collected and received a total sum in excess of Ten Thousand Dollars (\$10,000.).

[fol. 60] 6. Plaintiff had also acquired in the manner and for the purpose above described in paragraph 5 of this stipulation and is the owner and holder of One Hundred Thousand Dollars (\$100,000) par value of bonds of the Fletcher Joint Stock Land Bank (at Indianapolis, Indiana), which bonds were issued pursuant to an Act of the Congress of the

United States which became a law July 17, 1916, (Chapred 245, 39 Stat. at Large 380, Sec. 26; U. S. C. A., Title 12, Secs. 641 and 931) and are by said Act declared to be instrumentalities of the United States and both as to principal and interest exempt from federal, state, municipal and local taxation. Since the first day of May, 1933, plaintiff has collected and received as interest earned and payable on such bonds the sum of Two Thousand Five Hundred Dollars (\$2,500).

7. At its regular session in 1933 the General Assembly of the State of Indiana passed an act entitled "An Act to provide for the raising of public revenue by imposing a tax upon the receipt of gross income, to provide for the ascertainment, assessment and collection of said tax, and to provide penalties for the violation of the terms of this act, and declaring an emergency", which act was approved and became a law on February 27, 1933, and by its terms took effect and was in force from and after the first day of May, 1933, and is published as Chapred 50 at page 388 of the Acts of 1933, and is known and cited as the "Gross Income Tax Act of 1933".

[fol. 61] 8. Section 6(a) of said gross income tax act of 1933 provides that so much of a taxpayer's gross income as is derived from business conducted in commerce between the State of Indiana and other states of the United States, or between the State of Indiana and foreign countries, shall be excepted from taxation to the extent to which the State of Indiana is prohibited from taxing the same under the Constitution of the United States. Defendants and each of them are asserting that the Constitution of the United States does not in any way prohibit the levying of a tax upon gross income derived from business conducted in commerce between the State of Indiana and other states of the United States, or between the State of Indiana and foreign countries, and that plaintiff is required to file a return, and is liable to pay a tax at the rate prescribed in said act, upon the entire gross income of plaintiff, including that derived from interstate and foreign commerce as set forth in paragraphs 4(a), 4(b) and 4(c) of this stipulation.

Plaintiff asserts that under the Constitution of the United States, the State of Indiana is prohibited from levying a tax upon the gross income derived from plaintiff's commerce between the State of Indiana and other states of the

United States, and from levying a tax upon gross income derived from plaintiff's commerce between the State of Indiana and foreign countries, and, without the consent [fol. 62] of Congress, from laying any duties on articles exported by plaintiff to foreign countries, as set out in paragraphs 4(a), 4(b) and 4(c) of this stipulation and that the true intent of the General Assembly of Indiana in enacting said gross income tax act, and especially Section 6 (a) thereof, was to exempt from taxation as a part of the gross income of any taxpayer, the gross income derived from interstate and foreign commerce.

Plaintiff further asserts that if said act, when construed according to its true intent, impose a tax on the gross income of plaintiff derived from its business conducted as set forth in paragraphs 4(a), 4(b) and 4(c) of this stipulation, then said act is invalid and void for the reason that such tax constitutes a regulation of and a burden upon interstate and foreign commerce, and a duty upon exports without the consent of Congress, and is in violation of Section 8 and Section 10 of Article 1 of the Constitution of the United States. For the foregoing reasons the defendants and each of them are without authority to require plaintiff to file a return or to pay a tax upon the gross income derived from its business conducted as set forth in paragraphs 4(a), 4(b) and 4(c) of this stipulation, but defendants nevertheless are now asserting such right and declaring their intention to collect such tax.

9. Section 6(c) of said gross income tax act of 1933 [fol. 63] provides that so much of a taxpayer's gross income as is derived from sales to the United States Government, its departments or agencies, shall be excepted from taxation to the extent to which the State of Indiana is prohibited from taxing the same under the Constitution of the United States. Defendants and each of them are asserting that the Constitution of the United States does not in any way prohibit the levying of a tax upon gross income derived from sales to the United States Government, its departments or agencies, and that plaintiff is required to file a return and is liable to pay a tax at the rate prescribed in said act, upon the entire gross income of plaintiff, including that derived from sales to the United States Government, its departments or agencies, as set forth in paragraph 4 (d) of this stipulation.

Plaintiff asserts that under the Constitution of the United States, the State of Indiana is prohibited from levying a tax upon the gross income derived from plaintiff's sales to the United States Government, its departments or agencies, as set out in paragraph 4(d) hereof, and that the true intent of the General Assembly of Indiana in enacting said gross income act, and especially Section 6 (e) thereof, was to exempt from taxation as a part of the gross income of any taxpayer, the gross income derived from sales to the United States Government, its departments or agencies.

[fol. 64] Plaintiff further asserts that if said act, when construed according to its true intent, imposes a tax on the gross income of plaintiff derived from its sales to the United States Government, its departments or agencies, as set forth in paragraph 4 (d) hereof, then said act is invalid and void for the reason that such tax constitutes a regulation of and a burden upon the powers and functions of the United States Government and is in violation of the Constitution of the United States, and particularly of Section 8 of Article 1 thereof; and that for the foregoing reasons the defendants and each of them are without authority to require plaintiff to file a return or to pay a tax upon the gross income derived from its business conducted as set forth in paragraph 4 (d) of this stipulation, but defendants nevertheless are asserting such right and declaring their intention to collect such tax.

10. Plaintiff asserts that said gross income act of 1933 is invalid and void to the extent that a tax is levied upon (a) that part of the gross income of plaintiff which is derived from interest upon the tax exempt bonds, notes, and other evidences of indebtedness of municipal corporations within the State of Indiana and each of them described in paragraph 5 of this stipulation; (b) upon that part of the gross income of plaintiff which represents funds received upon maturities of any of such tax exempt obligations described in paragraph 5 of this complaint; and (c) upon [fol. 65] that part of the gross income of plaintiff which is derived from the sale of any of such tax exempt obligations described in paragraph 5 of this stipulation; for the reason that the tax upon such gross income impairs the obligation of the contracts existing between plaintiff and each of the municipalities or political subdivisions which issued the obligations, and in such respect, said act is in

conflict with Section 10 of Article 1 of the Constitution of the United States and with Section 24 of Article 1 of the Constitution of Indiana.

11. Plaintiff further asserts that said gross income tax act of 1933 is invalid and void to the extent that a tax is levied upon that part of the gross income of plaintiff which is derived from interest upon the tax exempt bonds of the Fletcher Joint Stock Land Bank as described in paragraph 6 of this stipulation, for the reason that the tax upon such gross income constitutes a tax upon an instrumentality of the United States and also impairs the obligation of the contract existing between the plaintiff and the issuer of said bonds, and in such respect said act is in conflict with Sections 8 and 10 of Article 1 of the Constitution of the United States and with Section 24 of Article 1 of the Constitution of Indiana.

12. Plaintiff's business is that of manufacturing, and the sale of its products is only an incident to such business. Plaintiff does not at its factory or home office, or at any [fol. 66] other place, maintain or operate any store, salesroom or other establishment for the business of wholesaling or retailing its products, or from which sales are made, but all of its products are sold only on orders accepted and approved at its home office, as set forth in paragraph 4 of this stipulation. Plaintiff asserts that it is not engaged in the business of wholesaling or jobbing as defined in Section 3 (b) of the act, nor in the business of retailing as defined in Section 3 (c), but is engaged only in the business of manufacturing as defined in Section 3 (a) of the act; and under said section, plaintiff's gross income is taxable only at the rate of one-fourth of one per cent, and no part of such gross income whether derived from the sale of products in quantities to dealers or distributors, or from the sale of single units to purchasers who are ultimate users of the same, is taxable at any other rate than that provided in said Section 3 (a) of the act. Notwithstanding the aforesaid, defendants and each of them are asserting the right to require the plaintiff to file a return and pay a tax under Section 3 (c) of said gross income tax act at the rate of one per cent upon that part of plaintiff's gross income which is derived from sales of its products to purchasers who are the ultimate users thereof.

13. Since the first day of May, 1933, when said gross income tax act became effective, the defendants and each of them have been and are promulgating rules and regulations [fol. 67] for the making of returns and for the ascertainment, assessment and collection of the tax imposed under such act, and have been and are issuing instructions and directions to plaintiff and other taxpayers as to the returns to be filed and the extent of the taxes to be paid by them under said act. Among such rules and directions defendants have announced and declared that the tax will be imposed upon the entire gross receipts, whether derived from sales within or without the State of Indiana, or whether in intra-state or interstate commerce, of every taxpayer engaged in the business of manufacturing and producing any article for sale; that the proceeds and earnings or interest received on bonds issued by the subdivisions of the State of Indiana and municipal bonds must be included in gross receipts for taxation; and that all gross receipts from sales made by a manufacturer to purchasers who are the ultimate users or consumers of the article sold will be taxed at the rate of one per cent.

14. In connection with and pursuant to such rules, regulations, instructions and directions, defendants have been and are now demanding that plaintiff file its return, and pay the taxes asserted by defendants to be collectible upon gross income received by plaintiff since May 1, 1933, and to be received by it during the current and succeeding taxable periods, as follows:

(a) Upon the gross income received by plaintiff in interstate and foreign commerce conducted as set forth in paragraphs 4 (a), 4 (b) and 4 (c) and referred to in paragraph 8 of this stipulation;

(b) Upon the gross income received by plaintiff from sales of its products to the United States Government, its departments or agencies;

(c) Upon the gross income received by plaintiff from tax exempt securities, including interest collected thereon, principal collected on payment at maturity and proceeds from the sale of such securities, as set forth in paragraphs

5 and 6 and referred to in paragraph- 10 and 11 of this stipulation;

(d) Upon the gross income of all sales of products by the plaintiff, at the rate of one per cent provided in Section 3 (c) of said act, where the purchaser is the ultimate user thereof, as set forth in paragraphs 4 (b) and 4 (e) and referred to in paragraph 12 of this stipulation;

and said defendants and each of them have determined to enforce their said demands upon the plaintiff, and unless prevented by judgment and decree of this Court, will proceed to enforce such demands to the extent of invoking and inflicting the various civil and penal provisions of said act if plaintiff shall fail to comply with such demand.

15. By reason of the declared intention and determination of defendants to levy and collect taxes upon all portions of the entire gross income of plaintiff in the manner and to the extent above set forth in this stipulation, and [fol. 69] the contention of plaintiff as hereinabove stated that such levy and collection of the taxes claimed by defendants upon certain portions of plaintiff's gross income hereinabove referred to will be unlawful and invalid, an actual controversy exists between the plaintiff in its own behalf and in behalf of other taxpayers similarly situated and, the defendants hereto; and it is necessary that the rights, status and legal relations of the plaintiff and of the defendants to this proceeding in respect to the subject matter hereof be determined and declared by this Court.

(End of Exhibit No. 1.)

And the Plaintiff here rested.

And the Defendants here rested.

And this was all the evidence given in the cause.

[fols. 70-71] Reporter's certificate to foregoing transcript omitted in printing.

[fol. 72] IN SUPERIOR COURT OF MARION COUNTY

CERTIFICATE OF TRIAL JUDGE TO BILL OF EXCEPTIONS—Filed
September 30, 1933.

And be it Further Remembered, That the foregoing typewritten transcript of the evidence, so taken and reported, as aforesaid, contains all the evidence given and offered in said cause, with the objections and motions made thereto, the rulings of the Court on said objections and motions, and the exceptions taken thereto; and the same is now embodied in and made a part of a Bill of Exceptions; and on the 30th day of September, 1933, and within the time allowed by the Court so to do, the Defendants tendered and presented to said Judge of the Superior Court of Marion County, State of Indiana, Room No. 5, this, its Bill of Exceptions, which contains the typewritten transcript of all the evidence, so taken as aforesaid, with the objections and motions made thereto, the rulings of the Court on said objections and motions, and the exceptions taken thereto; and prays that the same may, by said Judge, be examined, approved, signed, sealed and caused to be filed and made a part of the record in this cause; all of which is accordingly done this 30th day of September, 1933, and the same, so examined, approved and found to be correct, is ordered to be certified by the Clerk of this Court, without copying, as a part of the record in this cause.

Russell J. Ryan, Judge of the Superior Court of
Marion County, State of Indiana, Room No. 5.

[File endorsement omitted.]

[fol. 73] Clerk's certificate to foregoing transcript
omitted in printing.

[fol. 74] [File endorsement omitted]

IN SUPREME COURT OF INDIANA

#26401

WILLIAM STOREN, as Chief Administrative Officer of the Department of Treasury of the State of Indiana; Department of Treasury of the State of Indiana, Paul V. McNutt, William Storen, Floyd E. Williamson, as and Constituting the Board of Department of Treasury of the State of Indiana; Philip Lutz, Jr., as Attorney-General of the State of Indiana, Appellants;

vs.

J. D. ADAMS MANUFACTURING COMPANY, Appellee

Appeal from the Marion Superior Court, Room Five

ASSIGNMENT OF ERRORS—Filed November 21, 1933

The appellants, and each of them, say there is manifest [fol. 75] error in the judgment and proceedings in this cause, in this, to-wit:

1. The court erred in overruling the appellant's motion for a new trial.

For which errors Appellants, and each of them, pray that the judgment be in all things reversed.

Philip Lutz, Jr., Attorney General of Indiana; Fred A. Wiecking, Assistant Attorney General; Joseph P. McNamara, Deputy Attorney General, Attorneys for Appellants.

[fol. 76]

IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLANTS' BRIEF—Filed June 4, 1934

PROPOSITIONS, POINTS AND AUTHORITIES

Error Relied Upon for Reversal

[fol. 77] All propositions, points and authorities are brought under and addressed to Assignment of Errors No. 1; that the trial court erred in overruling the appellants' motion for a new trial. (Record, pp. 1 and 1a.)

Proposition II

The court erred in overruling the motion for a new trial for the reason that the imposition of the gross income tax upon interest derived from bonds of Indiana governmental units is not an impairment of contract and that said act is not in conflict of Section 10 of Article 1 of the Constitution of the United States of America or Section 24 of Article 1 of the Constitution of the State of Indiana.

NOTE.—This proposition is limited to the consideration of whether or not the interest from tax-exempt securities may be a part of the taxpayer's gross income for the reason that that was the only item concerning such bonds which was in controversy in the trial court.

Point 1

It is well to note that the three sections of Chapter 59 of the Acts of 1919, as amended by Chapter 191 of the Acts of 1923 (Burns' Annotated Indiana Statutes, 1926 Revision, Section 14037), which were relied upon by the appellee in the trial court as forming the basis for the exemption claim are Sections 20, 21 and 22. There is nothing contained in these sections which could be construed as an exemption of interest on the bonds therein referred to. [fol. 78] These sections are as follows:

"The following property shall be exempt from taxation: * * * :

Nineteenth. The real estate and personal property of any corporation which shall have established a public library as provided by law, which real estate and personal property shall be used exclusively for such library purposes.

Twentieth. All bonds, notes and other evidence of indebtedness hereafter issued by the State of Indiana or by municipal corporations within the state upon which the said state or the said municipal corporations pay interest shall be exempt from taxation.

Twenty-first. That all bonds hereafter authorized by any county or township in the State of Indiana for the purpose of building, constructing and paying for the construction of any free gravel, macadamized or other improved roads, shall be exempt from taxation: Provided, Said bonds shall not bear a greater rate of interest than five per cent interest per annum, payable semi-annually.

Twenty-second. All bonds and other evidences of indebtedness hereafter issued by or in the name of any municipality or other political or civil subdivision of the State of Indiana, or by or in the name of any taxing district in the State of Indiana, for the purpose of paying the cost of acquisition, construction, improvement or maintenance of streets, highways, drains, levees, parks, docks, waterways, boulevards, playgrounds, bridges, sewage, disposal plants [fol. 79] and other improvements of public benefit and which bonds or other evidences of indebtedness are payable from special assessments or special taxes, shall be exempt from taxation, unless otherwise expressly provided in this section."

Burns' Annotated Indiana Statutes, 1926 Revision,
Sec. 14037.

It is submitted that no contract has been made by the State of Indiana not to include interest from bonds of state political subdivisions in the measure of excise taxes imposed by the State.

Point 2

It is well settled that where a State contracts to exempt from direct property taxes state bonds, as the sections relied upon by the appellee purport to do, it does not impair the obligation of contract to include the interest derived from the bonds in the measure of an excise tax imposed upon a

privilege, value of which is in part measured by gross income which includes interest derived from such bonds.

Orr v. Gilman, 183 U. S. 278, 288, 289.

Point 3

The rule governing exemption is that an intention upon the part of the General Assembly to grant an exemption from the taxing power of the State can never be implied, but must be expressed in clear and unmistakeable terms. This for the reason that when an exemption is claimed under a statute it is to be construed strictly against the taxpayer and in favor of the public as represented by the State. This rule should be given its full application in this [fol. 80] instance where the taxpayer is claiming to be exempt from the payment of a tax upon interest accruing from non-taxable obligations of political subdivisions of the State.

2 Cooley on Taxation (4th Ed.), Sec. 672;
 M. E. Church v. Ellis, 38 Ind. 3;
 Madison v. Fitch, 18 Ind. 33;
 Indianapolis v. McLean, 8 Ind. 328;
 Orr v. Baker, 4 Ind. 86.

Proposition III

The tax imposed by Chapter 50 of the Acts of 1933 is not an intent by the State of Indiana to regulate commerce among the several states and with foreign nations and is not repugnant to the provisions of Article 1, Section 8, of the Constitution of the United States.

Point 1

The tax imposed by Chapter 50 of the Acts of 1933 is a tax upon a privilege exercised wholly within the State of Indiana. Such a tax would not be repugnant as levying a tax in conflict with the commerce clause of the Federal Constitution.

American Mfg. Co. v. City of St. Louis, 250 U. S.
 459.

Point 2

It is well to note that the tax imposed by this act is not only upon a privilege exercised wholly within the State of Indiana, but this privilege is measured by the value of the

articles manufactured. This for the reason that Chapter [fol. 81] 50 of the Acts of 1933 expressly exempts from its operation, by Section 1-f, that increment which accrues as a result of the sale in a State other than the State of manufacture. Section 1-f provides: " * * * That the term gross income shall not include cash discounts allowed or taken on sales. Nor freight prepaid by the taxpayer and repaid to him by the purchaser;"

The variable represented by the price of articles manufactured within the State, the contract for the sale of which is entered into within the State and the purchase price of which is paid within the State is the freight charge. The value of the articles in the plant can easily and properly be arrived at by deducting the freight charge to the place of delivery. Therefore we find this act by Section 1-f has affirmatively abstained from placing a tax upon the entire receipts accruing as the result of sales which form the basis of the plaintiff's case, and that whenever the words "gross income" are used in this act they have been defined by the specific provisions of the act itself as being the receipts less the only variable which results from dealings in any way connected with the transportation of the articles across state lines. This brings the case squarely within the rule that has been laid down by the Supreme Court in the cases of Hope Natural Gas Company v. Hall, 274 U. S. 284, 288; American Manufacturing Company v. City of St. Louis, 250 U. S. 459.

Point 3

Manufacturing, as is mining, is a local business; nor does the fact that the articles manufactured are to be afterwards transported into or used in States other than the State of its production make it a part of such commerce.

United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 66 L. Ed. 795;

Crescent Cotton Oil Co. v. State of Mississippi, 257 U. S. 129, 66 L. Ed. 166;

Heisler v. Thomas Colliery Co., 260 U. S. 245, 67 L. Ed. 237;

Oliver Iron Mining Co. v. Lord, 262 U. S. 172, 67 L. Ed. 929;

American Mfg. Co. v. City of St. Louis (C. C. A.), 8 Fed. (2d) 447;

Stratton's Independence v. Howbert, 231 U. S. 399, 415, 58 L. Ed. 285;
 United Leather Workers International Union v. Herkert & M. Trunk Co., 265 U. S. 457, 68 L. Ed. 1104;
 Del., Lack. & West. R. R. v. Yurkonis, 238 U. S. 439, 59 L. Ed. 1397.

Point 4

A state tax which imposes an excise upon a privilege purely intrastate measured, however, by an index determined through later sales in interstate commerce is not invalid.

American Mfg. Co. v. City of St. Louis, 250 U. S. 459;
 Hope Natural Gas Co. v. Hall, 274 U. S. 284, 288;
 Flint v. Stone Tracy Co., 230 U. S. 107;
 Home Insurance Co. v. New York, 134 U. S. 594;
 U. S. Express Co. v. Minnesota, 223 U. S. 335;
 [fol. 83] Kansas City, F. S. & N. R. Co. v. Botkin, 240 U. S. 227, 60 L. Ed. 617;
 Hump Hairpin Mfg. Co. v. Emmerson, 258 U. S. 290, 66 L. Ed. 622.

[fol. 84] IN SUPREME COURT OF INDIANA

Marion S. C. #26401

WILLIAM STOREN, as Chief Administrative Officer of the Dept. of Treasury of the State of Ind. et al.

vs.

J. D. ADAMS MFG. CO.

JUDGMENT—April 30, 1937

Come now the parties by counsel and the Court, being advised in the premises, reverses the judgment of the court below with the following opinion pronounced by Fansler, J. (H. I.). Treanor, J. dissenting in part and concurring in part with an opinion (H. I.).

It is therefore considered by the Court that the judgment of the court below be reversed with instructions to enter

judgment for appellants as indicated by this opinion, at the cost of the appellees.

And it is further considered and adjudged by the Court that the appellant recover of the appellee the sum of \$— for — costs in this behalf expended.

G. L. Tremain, Chief Justice.

[fol. 85] IN SUPREME COURT OF INDIANA

No. 26401

WILLIAM STOREN, as Chief Administrative Officer of the Department of Treasury of the State of Indiana; Department of Treasury of the State of Indiana; Paul V. McNutt, William Storen, Floyd E. Williamson, as and Constituting the Board of Department of Treasury of the State of Indiana; Philip Lutz, Jr., as Attorney-General of the State of Indiana, Appellants,

v.

J. D. ADAMS MANUFACTURING COMPANY, Appellee

Appeal from Superior Court, Marion County

OPINION—Filed April 30, 1937

FANSLER, J.:

Appellee brought this action seeking a declaratory judgment construing certain portions of the Gross Income Tax Act of 1933 (Acts 1933, c. 50, p. 388, Burns' Ann. St. 1933, § 64-2601 et seq.). The facts were stipulated and are not in dispute. There was a judgment for appellee.

The ruling on appellants' motion for a new trial is assigned as error.

[fol. 86] Appellee is an Indiana corporation, engaged in manufacturing machinery, tools, appliances, and equipment for the construction, improvement, and repair of roads and highways. Its home office, and principal place of business, and its only manufacturing plant, is located in the state of Indiana. It sells a substantial portion of its products to purchasers within the state, some to the ultimate user or consumer, and the remainder to dealers who resell. It sells a substantial portion of its products, through

selling agents or otherwise, to dealers in other states and in foreign countries. All sales made outside of the state are upon orders taken subject to the approval of the home office, shipment is made from the factory, and payment is made to the home office. Its receipts from business in other states and foreign countries, during each of the four years immediately preceding the trial, were in excess of \$1,000,000, and amounted to approximately 80 per cent. of its entire gross income from the sale of its products. At certain seasons of each year it invests, for temporary periods, a substantial portion of its working capital in bonds or other obligations of municipal corporations within the state, which obligations are interest-bearing, and, by the statutes in force at the time of issuance, are exempt from taxation; and, since the 1st day of May, 1933, it has collected, as part of its gross income, interest on such obligations in excess of \$2,500.

Upon these facts, the trial court held: "That said Gross Income Tax Act of 1933 does not by any of its terms or provisions authorize or require the assessment or collection of any tax upon the gross income derived by the plaintiff, [fol. 87] or others similarly situated, from business so conducted in commerce between the State of Indiana and other states of the United States or between the State of Indiana and foreign countries, but such gross income is by said act expressly excepted from such tax." It further held that, in so far as the act purports or attempts to impose a tax upon gross income, consisting of interest upon tax-exempt securities, it impairs the obligation of contracts, and is void under the state and federal Constitutions. It further found that the plaintiff was not engaged in any business except manufacturing, as defined in section 3 (a) of the act, and that the law does not by any of its terms authorize or require the assessment of any tax upon the gross income of appellee, or others similarly situated, derived from sales to ultimate users or consumers, at any other or different rate than one-fourth of one per cent., the rate which applies to manufacturers.

Three questions are presented: (1) Is that part of appellee's gross income, which is derived from sales of appellee's products to ultimate users, taxable at one per cent., the rate which applies to those engaged in the business of retailing, or at one-fourth of one per cent., the rate which applies to those engaged in the business of manufacturing?

(2) Is that part of appellee's gross income, derived from interest payments on tax-exempt bonds of municipal corporations of the state of Indiana, taxable? (3) Is that part of appellee's gross income, which is derived from the sale of its products in interstate and foreign commerce, taxable?

Section 3 of the act provides for a tax "upon the entire [fol. 88] gross income of every person engaged in the business of manufacturing" at the rate of one-fourth of one per cent., and "upon the entire gross income of every person engaged in the business of retailing" at the rate of one per cent.

It is appellee's contention that sale is an indispensable incident to the business of manufacturing and that whether a person is engaged in manufacturing is not determined by the manner in which he sells his goods, and that those engaged in manufacturing are, under the statute, taxable at the rate of one-fourth of one per cent. only, regardless of whether their sales are to jobbers, wholesalers, or at retail directly to the consumer. If this position can be sustained, it means that manufacturers, who operate exclusively through retail stores or stations and compete with retailers in the ordinary sense, have a discriminatory advantage by reason of the fact of manufacturing their own product. The goods sold by the ordinary retailer come down to him through a manufacturer, a jobber, and a wholesaler, and are burdened with one-fourth of one per cent. tax upon the manufacturer, the jobber, and the wholesaler, and one per cent. upon the retailer, a total of $1\frac{3}{4}$ per cent, while his competing retailer, who manufactures his own product, would pay but one-fourth of one per cent. There is nothing in the act which indicates a legislative design and intention to create such a discriminatory situation. The basic tax upon taxpayers generally is one per cent. Section 4 recognizes that the same person or corporation may be taxable upon different parts of his income at different rates, and provides that each person *person* shall be sub-[fol. 89] ject to taxation at the highest rate applicable to any part of his gross income unless he shall segregate the parts subject to different rates. Some reason can be seen for taxing manufacturers, jobbers, and wholesalers at a lower rate, since their merchandise moves in larger quantities and in greater price competition, and since the articles manufactured and sold by them must be ultimately bur-

dened with successive taxes. A manufacturer, as the term is commonly understood, is one who processes raw material "and stands between the original producer and the dealer." Indiana Creosoting Co. v. McNutt, Governor, et al. (Ind. Sup. 1936) 5 N. E. (2d) 310, 314.

The question of whether there would be a sufficient constitutional basis for classification and discrimination between those who manufacture their own merchandise, and other retailers, need not be considered, since no legislative intention to so discriminate is apparent, and a reasonable interpretation of the act precludes such a conclusion.

The rate does not depend upon the business in which the taxpayer is primarily engaged, but upon the activity from which each item of his gross income is received. Sales to ultimate consumers must be regarded as retail sales, whether made by the producer of the article sold or another.

The court erred in concluding that that part of the income of a manufacturer, which was received from sales at retail to the ultimate users, is not taxable at one per cent.

The bonds from which the income was received are specifically exempted from taxation, but there is no statutory [fol. 90] provision which exempts the interest from excise taxes which may be imposed by the state. In Orr v. Gilman (1902) 183 U. S. 278, 289, it was held by the Supreme Court of the United States: "That a transfer or succession tax, not being a direct tax upon property, but a charge upon a privilege exercised or enjoyed under the law of the State, does not, when imposed in cases where the property passing consists of securities exempt by statute, impair the obligation of a contract within the meaning of the Constitution of the United States." Upon the same reasoning, it does not offend against article 1, section 24, of the Constitution of Indiana. The gross income tax is not a tax upon property, but an excise upon a privilege. Miles et al. v. Department of Treasury et al. (1935) 209 Ind. 172, 199 N. E. 372.

The court erred in holding that that part of appellee's gross income, which consists of interest on tax-exempt bonds, is exempt from gross income tax.

It was held that section 6 (a) of the law excepts gross income derived from commerce between the several states and with foreign countries. Section 6, so far as it is pertinent, reads as follows: "There shall be excepted from the gross income taxable under this act: (a) So much of such

gross income as is derived from business conducted in commerce between this state and other states of the United States, or between this state and foreign countries, to the extent to which the State of Indiana is prohibited from taxing under the Constitution of the United States of America." This clause excepts such gross income only to the extent that taxation is forbidden by the Constitution, [fol. 91] and the act must be construed as contemplating a tax on all income that the state is permitted to tax. Courts will not prevent the carrying out of a legislative intention unless the Constitution clearly forbids. The act must be construed as levying the tax unless such a levy is violative of article 1, section 8, of the federal Constitution. Final jurisdiction of questions involving the federal Constitution is in the Supreme Court of the United States, and the principles announced in its decisions are controlling upon such questions. Any tax upon one engaged in interstate commerce is a burden upon interstate commerce, but all taxes are not illegal burdens. It is only where the tax is laid upon interstate commerce as such, or in such a manner as to discriminate against interstate commerce, that it is to be condemned. Those engaged in interstate commerce are not exempt from taxation by the states, and any tax that does no more than impose upon them or their property a reasonable share of the burdens of government will not be condemned. In passing on tax legislation, the court has looked beyond the form and language of the act, and its construction and characterization by the state courts, and determined its constitutionality in each instance from its practical operation and effect. This involves an examination of the law to ascertain the manner in which it operates and the effect upon the taxpayer.

It has been repeatedly held that a state tax, measured by gross receipts, which in effect does no more than burden the taxpayer engaged in interstate commerce with a fair share of the regular property taxes levied by the state, or its equivalent, cannot be condemned as violating the federal Constitution. But the decisions sustain the rights of the [fol. 92] state to levy excises against those engaged in interstate and foreign commerce, and therefore, while the cases refer to a fair share of the regular property taxes, they must be construed as establishing the rule that a statute will not be condemned if in effect it burdens those engaged in interstate commerce, only to the extent of their

just share of governmental burdens, under any reasonable method of general taxation.

The statute here under consideration levies a tax upon all who are domiciled within the state, based upon the privilege of domicile, and transacting business, and receiving gross income, within the state, and measured by the amount of gross income. The rate upon income derived from manufacturing, mining, producing minerals, oil, and gas, timber, and agricultural products, and from wholesaling and jobbing commodities, is one-fourth of one per cent. The rate for income derived from all other businesses or occupations, including income from the sales of real estate, and the performance of contracts, and from the investment of capital, and all receipts from all other sources whatsoever, is one per cent. It is thus seen to be a general tax, affecting all who are domiciled within the state who receive income, except those whose income is less than \$1,000. There are other minor exemptions of the usual character. The provisions of the law are discussed in detail in Miles et al. v. Department of Treasury et al., *supra*, in which the law was held constitutional, and the tax an excise.

The statute was enacted concurrently with other legislation limiting levies upon property. The greater portion of the revenue raised goes back to local units of government [fol. 93] for the maintenance of schools and other activities otherwise dependent upon property levies. Legislative history indicates that one of the purposes of the Gross Income Tax Law was to redistribute governmental burdens and relieve property of a tax burden which was thought to be too great.

In support of its contention that the tax imposed is not repugnant to the commerce provision of article 1, section 8, of the Constitution of the United States, appellants assert that the case of *American Manufacturing Co. v. City of St. Louis* (1919) 250 U. S. 459, 462, 463, 464, 465, is decisive of the question. That case involved an ordinance of the city of St. Louis, imposing an excise tax upon manufacturers and merchants; the amount of the tax to be ascertained by, and proportioned to, the amount of sales of goods, whether sold within or without the state, and whether in domestic or interstate commerce. The ordinance was construed by the state Supreme Court as a license tax, graduated to accord to the amount of business carried on to the point of realizing profit or liquidation of loss by the sale of the product; that

the fixing of the amount of the tax by the amount realized upon sale of the goods is equitable; that it is a tax upon the manufacturer for the privilege of pursuing his business under the protection of the laws of the state and city ordinances, notwithstanding the amount of the tax is ascertained by the final sale price of the goods within or without the state. It is held that this construction by the Supreme Court of the state is conclusive, but that, "as has been held very often, the question whether a state law or a tax imposed thereunder deprives a party of rights secured by the federal Constitution depends not upon the form of the act, nor [fol. 94] upon how it is construed or characterized by the state court, but upon its practical operation and effect." It is said in the opinion:

"No tax has been or is to be imposed upon any sales of goods by plaintiff in error except goods manufactured by it in St. Louis under a license conditioned for the payment of a tax upon the amount of the sales when the goods should come to be sold. The tax is computed according to the amount of the sales of such manufactured goods, irrespective of whether they be sold within or without the State, in one kind of commerce or another; and payment of the tax is not made a condition of selling goods in interstate or in other commerce, but only of continuing the manufacture of goods in the City of St. Louis.

"There is no doubt of the power of the State, or of the city acting under its authority, to impose a license tax in the nature of an excise upon the conduct of a manufacturing business in the city. Unless some particular interference with federal right be shown, the States are free to lay privilege and occupation taxes. Clark v. Titusville, 184 U. S. 329; St. Louis v. United Railways Co., 210 U. S. 266, 276.

"The city might have measured such tax by a percentage upon the value of all goods manufactured, whether they ever should come to be sold or not, and have required payment as soon as, or even before, the goods left the factory. * * *

"In the outcome the tax is the same in amount as if it were measured by the sale value of the goods but imposed upon the completion of their manufacture. The difference is that, for reasons or practical benefit to the taxpayer, the city has postponed payment until convenient means have [fol. 95] been furnished through the marketing of the goods.

"In our opinion, the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce. And, for like reasons, it has not the effect of imposing a tax upon the property or the business transactions of plaintiff in error outside of the State of Missouri, and hence does not deprive plaintiff in error of its property without due process of law.

"Our recent decisions cited in opposition to this view, *Crew Levick Co. v. Pennsylvania*, 245 U. S. 292, 297; *Looney v. Crane Co.*, 245 U. S. 178, 188, and other cases of the same kinds referred to therein, are so obviously distinguishable that particular analysis is unnecessary."

It is said in *Miles et al. v. Department of Treasury et al.*, *supra*, 209 Ind. 172, on page 188, 199 N. E. 372, 379: "We conclude that the tax in question is an excise, levied upon those domiciled within the state or who derived income from sources within the state, upon the basis of the privilege of domicile or the privilege of transacting business within the state, and that the burden may reasonably be measured by the amount of income. The reasoning which justified a tax upon the basis of domicile as readily supports and justifies a tax upon the basis of the right to receive income within, or transact business under the protection of, the state."

[fol. 96] The St. Louis ordinance discriminates against those most likely to be engaged in interstate commerce—manufacturers and merchants—since it lays a burden on them that is not laid on others, while the law under consideration lays a burden upon every person domiciled in the state who received a gross income. If there be discrimination, it is in favor of those likely to be engaged in interstate and foreign commerce, since they pay but one-fourth of one per cent, while other taxpayers pay one per cent. In other respects the differences in the law are in the form, the words, and not in the substance. The substantial difference that the law here is general and discriminates in favor of those engaged in interstate commerce, weighs in favor of

constitutionality. Both taxes, in so far as they affect commerce, are measured by the gross income from the sale of merchandise. Both, in practical operation and effect, exact a contribution to the support of government, measured by the gross income, for the privilege of transacting business under the protection of the local sovereign. Neither was designed nor intended as a regulation of, or a tax or burden upon, interstate commerce as such, or as a discrimination against those engaged in interstate commerce. If the tax here is to be condemned, while the St. Louis ordinance is upheld, it must be because of the form of the enactment and the words used. By amendment, manufacturers and merchants could be taken out of the Gross Income Tax Law, and, by a new enactment, following the language of the St. Louis ordinance, they could be burdened exactly as they are burdened here. It is clear from the decisions that, under such circumstances, a tax will not be condemned as unconstitutional. Other statutes, levying taxes to be measured by gross receipts, have been condemned, but always upon the [fol. 97] ground that they were discriminatory or that they levied a direct burden upon interstate or foreign commerce as such.

There are statements in U. S. Glue Co. v. Town of Oak Creek (1918) 247 U. S. 321, 326, 327, 328, 329, and Peck & Co. v. Lowe (1918) 247 U. S. 165, which have been considered as condemning taxes measured by gross income, merely because the amount of the tax is based upon gross income. Both opinions were written before the St. Louis Case above referred to, and, since a tax measured by gross income was there upheld, and taxes of the same character upheld in other cases, these decisions cannot have been so intended. The first case involved a net income tax of the state of Wisconsin; the second the federal net income tax. A general tax, measured by gross income, has never been passed upon by the Supreme Court of the United States, and no such tax was under consideration in the cases referred to. It must be concluded that the statements in those cases concerning gross income taxes were used as argument in defense of net income taxes, and not in condemnation of gross income taxes as such.

In U. S. Glue Co. v. Town of Oak Creek, supra, the court considered and sustained the Wisconsin Net Income Tax Law. The contention was that income derived from inter-

state commerce was not taxable. The tax was general, and not upon any particular business or calling. It is said in the opinion:

"It is settled that a State may not directly burden interstate commerce, either by taxation or otherwise. But a tax that only indirectly affects the profits or returns from such commerce is not within the rule. * * * (a) that the immunity of an individual or corporation engaged in interstate commerce from state regulation does not prevent a State from imposing ordinary property taxes upon property having a situs within its territory and employed in interstate commerce; and (b) that the franchise of a corporation, although that franchise be the business of interstate commerce, is, as a part of its property, subject to state taxation, provided at least the franchise be not derived from the United States. * * *

"Yet it is obvious that taxes imposed upon property or franchises employed in interstate commerce must be paid from the net returns of such commerce, and diminish them in the same sense that they are diminished by a tax imposed upon the net returns themselves."

It is further said:

"The distinction between direct and indirect burdens, with particular reference to a comparison between a tax upon the gross returns of carriers in interstate commerce and a general income tax imposed upon all inhabitants incidentally affecting carriers engaged in such commerce, was the subject of consideration in Philadelphia & Southern S. S. Co. v. Pennsylvania, 122 U. S. 326, 345, where the court, by Mr. Justice Bradley, said: 'The corporate franchises, the property, the business, the income of corporations created by a State may undoubtedly be taxed by the State; but in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection, interstate or foreign commerce, or any other matter exclusively within the jurisdiction of the Federal government.' Many previous cases were referred to.

"The correct line of distinction is so well illustrated in two cases decided at the present term that we hardly need go further. In Crew Levick Co. v. Pennsylvania, 245 U. S. [fol. 99] 292, we held that a state tax upon the business of selling goods in foreign commerce, measured by a certain

percentage of the gross transactions in such commerce, was by its necessary effect a tax upon the commerce, and at the same time a duty upon exports, contrary to §§ 8 and 10 of Article 1 of the Constitution, since it operated to lay a direct burden upon every transaction by withholding for the use of the State a part of every dollar received. On the other hand, in Peck & Co. v. Lowe, ante, 165, we held that the Income Tax Act of October 3, 1913, c. 16, § 2, 38 Stat. 166, 172, when carried into effect by imposing an assessment upon the entire income of a corporation, approximately three-fourth of which was derived from the export of goods to foreign countries, did not amount to laying a tax or duty on articles exported within the meaning of Art. 1, § 9, cl. 5 of the Constitution. The distinction between a direct and an indirect burden by way of tax or duty was developed, and it was shown that an income tax laid generally on net incomes, not on income from exportation because of its source, or in the way of discrimination, but just as it was laid on other income, and affecting only the net receipts from exportation after all expenses were paid and losses adjusted and the recipient of the income was free to use it as he chose, was only an indirect burden.

"The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and a charge that is only indirect and incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss or to so diminish the profits as to impede or discourage the conduct of the commerce. A tax upon the net profits has not the same deterrent effect, since it does not arise at all unless a gain is shown over and above expenses and losses, and the tax cannot be heavy unless the profits are large. Such a tax, when imposed upon net incomes from whatever source arising, is but a method of distributing the cost of government, like a tax upon property, or upon franchises treated as property; and if there be no discrimination against interstate commerce, either in the admeasurement

of the tax or in the means adopted for enforcing it, it constitutes one of the ordinary and general burdens of government, from which persons and corporations otherwise subject to the jurisdiction of the States are not exempted by the Federal Constitution because they happen to be engaged in commerce among the States."

It will be noted that the statement that property taxes are paid from net returns is not accurate, since an ordinary property tax must be paid whether there are net returns, or any returns, from the property. In *Philadelphia & Southern Steamship Co. v. Pennsylvania*, supra, 122 U. S. 326, on pages 344, 345, the court said of the tax:

"We do not think that it can properly be regarded as an income tax. It is not a general tax on the incomes of all the inhabitants of the state; but a special tax on transportation companies. Conceding, however, that an income tax may be imposed on certain classes of the community, distinguished by the character of their occupations; this is not an income tax on the class to which it refers, but a tax [fol. 101] on their receipts for transportation only. * * * It is unnecessary, therefore, to discuss the question which would arise if the tax were properly a tax on income. It is clearly not such, but a tax on transportation only."

While it is true that in the Peck Case reference is made to the fact that the levy is upon the income net after all the expenses are paid and losses are adjusted, stress is put upon the fact that there is no discrimination, and that the tax is a general tax. A law which taxes the net income of persons engaged in foreign commerce, to the exclusion of all other persons, could not be upheld, notwithstanding the levy is effective only after expenses are paid and losses adjusted. Such a law would clearly be held invalid, since it would be directly discriminatory, and would not have the saving grace of being a general law affecting all persons, and thus the effect on commerce an incidental feature only. It must be concluded that the fact that the tax was general, and not discriminatory, controlled the decision. In the discussion in both net income tax cases, the court must have had in mind gross income tax laws affecting special classes, such as had been dealt with in the *Philadelphia & Southern*

Steam Ship Co. Case and the Crew Levick Co. Case, and not general gross income tax laws. It is true that: "A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise." But it has never been denied, and has been expressly recognized, that general property taxes are a burden upon commerce, and that, especially where the value of the property is determined in whole or in part by gross receipts, the tax upon the property affects each transaction in proportion to its magnitude. Property taxes must be paid from the proceeds of the business if it is to continue, [fol. 102] and in ordinary accounting taxes are set up as a cost which must be taken into consideration in fixing selling prices, and it may be said, concerning an ordinary property tax, that: "Conceivably it may be sufficient to make the difference between profit and loss or to so diminish the profits as to impede or discourage the conduct of the commerce." A manufacturer or wholesaler, located in a city or state where property taxes are high, access to market being equal, cannot compete upon even terms with an equally equipped competitor located in a community where property taxes are exceptionally low. The difference may be slight, but it is an impediment. A tax of one-fourth of one per cent upon gross income may amount to no more than the difference in property taxes in a community where the taxes are high and another where taxes are low. If a given concern does \$1,000,000 of export business, and earns a net profit of 5 per cent, or \$50,000, the result is the same whether it is taxed at one-fourth of one per cent upon gross income or five per cent upon net income. Selling prices are fixed, to some extent at least, by competition and market resistance, and in either event the actual net income result is the same, and the actual burden upon the business is identical. It would seem therefore that the most cogent reasons given in the Peck Case, for supporting the net income tax law, are the fact that it is not discriminatory, and that it is a general tax. These are the reasons consistently given in support of property taxes, including those in which the value of the property for tax purposes is measured by gross income. All taxes are a burden, but those that have been condemned, as in Philadelphia & Southern Steamship Co. v. Pennsylvania, *supra*, and Crew Levick Co. v. Common-

[fol. 103] wealth of Pennsylvania, *supra*, were not general taxes laid upon all citizens, and they were on their face discriminatory against commerce.

It is said in *Cudahy Packing Co. v. State of Minnesota* (1918) 246 U. S. 450, 453: "On the other hand, if what is done is to reach the property and not to tax the gross earnings, the latter being taken merely as an index or measure of the value of the former, it well may be that the objection urged against the tax is untenable; for, as this court has said, 'by whatever name the tax or taxes may be called that are fixed by reference to the value of the property, if they are not imposed because of its use in interstate or foreign commerce, and if they amount to no more than would be legitimate as an ordinary tax upon the property, valued with reference to the use in which it is employed, they are not open to attack' as restraining or burdening such commerce."

It is said in many of the cases that, if a tax on gross income or gross revenue (and none of the cases deal with a general tax) is in lieu of other taxes on property, the tax is valid, but that if it is in addition to property taxes, and a tax upon the income, it is an undue and forbidden burden. But, according to the oft-repeated statements in the opinions that the name or character of the tax is of secondary importance, and that undue burden and discrimination is the primary thing, it will be seen that it is not important whether the tax is in fact a property tax or an excise. *Pullman Co. v. Richardson*, etc. (1923) 261 U. S. 330. It must therefore be assumed that the decisions were not intended to lay down the rule that a tax based upon gross income to be valid, must be a property tax, while a tax on net income may [fol. 104] be sustained although it is an excise. It seems clear from all the cases that the distinction lies in discrimination. In the *Philadelphia & Southern Steamship Co.* Case the tax was upon the gross income because it was derived from interstate commerce. A tax upon property, because it is used in interstate commerce, would likewise be condemned. It was held in *Galveston, etc., R. Co. v. State of Texas* (1908) 210 U. S. 217, that a tax, by whatever name, will be upheld if it amounts to no more than the ordinary tax on property or the just equivalent. In other words, if it is designed and intended only as the taxpayer's just share of the cost of government, and not as a burden upon, or discrimination against, interstate commerce, it will not be condemned. "Even interstate business must pay its way."

Postal-Telegraph Cable Co. v. City of Richmond (1919) 249 U. S. 252, 259. In Pullman Co. v. Richardson, etc., *supra*, 261 U. S. 330, on page 339, it was said, in sustaining the law: "There is no ground for thinking that it operates as a discrimination against interstate commerce." And in Bass, etc., Ltd., v. State Tax Commission (1924) 266 U. S. 271, 283, that the act was not a mere act "under the guise of legitimate taxation." In U. S. Glue Co. v. Town of Oak Creek, *supra*, it is said that a corporation engaged in interstate commerce is liable to ordinary taxes, and in Shaffer v. Carter, State Auditor, et al. (1920) 252 U. S. 37, that the states have full power to tax their people and their property. It is said in Matson Navigation Co. et al. v. State Board of Equalization, etc., et al. (No. 346, March 2, 1926) — U. S. —, that: "Unquestionably annual profits, gains or net income derived from business done within the State is an indication sufficiently significant to be deemed a reasonable base on [fol. 105] which to compute the value of that use." The case involved corporate franchises, but it is unquestionably true also that annual profits, gains; or net income have sufficient significance to be deemed a reasonable basis for taxation of citizens generally. No reason is pointed out why gross income is not in the same category, and in Miles et al. v. Department of Treasury et al., *supra*, it was held to have sufficient significance to be a reasonable basis for a tax upon residents of the state generally. If business is done, there is a burden upon the facilities of government without regard to whether there is profit. The state functions for those who make a profit and for those who do not. Governmental instrumentalities are not designed to guarantee a profit. The state serves both, those who profit and those who do not. Why one who manufactures and sells a \$1,000,000 of machinery in this state and makes no profit should be exempt from taxation, while his competitor who manufactures and sells a like amount and makes a profit should be compelled to pay, is not clear.

There is nothing in the cases that condemns a non-discriminatory gross income tax if it does nothing more than burden corporations engaged in interstate commerce with their proper share of the burdens of the government under which they conduct their operations. The tax under consideration here is general. It not only does not discriminate against those engaged in interstate commerce, but seems to discriminate in their favor. It may be assumed that

most taxpayers engaged in interstate commerce are manufacturers and wholesale dealers in merchandise. They are taxed at the rate of one-fourth of one per cent on their gross incomes. The taxpayer generally is taxed at the rate of one per cent of his gross income.

[fol. 106] In Miles et al. v. Department of Treasury et al., supra, 209 Ind. 172, on pages 191, 192, 199 N. E. 372, 380, 381, it is said: "The lower rate is imposed upon those whose activities bring, or are likely to bring, them in competition with residents of other states, and who are subject to such competition within the state of Indiana as well as without. Any tax measured by the extent of the business activities of such persons handicaps them in their activities. It is within the scope of legislative power in levying taxes to vary rates upon considerations of public policy, and, if upon the theory that to do otherwise might tend to discourage given industries, it may put a lighter burden upon them so long as all in like circumstances are treated alike."

It is well settled that, if any state of facts reasonably can be conceived that will sustain a law, the existence of that state of facts must be assumed, and the burden is upon him who assails the law to show injury in the facts. There is no discrimination under this law between manufacturers and wholesalers residing in the state, and, in so far as those engaged in interstate and foreign commerce are concerned, it must be assumed that their competitors in other states and in foreign countries "bear their proper share of the burdens of the government under whose protection they conduct their operations."

The purpose of the Gross Income Tax Law was to broaden the basis of taxation and to relieve property of some of the burden of maintaining the government. It was purposed to reach those who paid little or no property tax and who received benefits or potential benefits from the instrumentalities of the government for which they did not carry a proportionate share of the burden. Property-owner taxpayers on [fol. 107] the whole are benefited. Some property owners, though their property tax is lightened, may pay a larger proportion of taxes because of the gross income tax, some may pay less, but it is clear that the owner of a given amount of property, who conducts a large manufacturing business in the state, puts more burden or potential burden upon the instrumentalities of government, maintained and standing by for his protection, than one with a like amount of prop-

erty who conducts a smaller business, regardless of whether the products of the business are sold within or without the state.

Whether the combined property and gross income tax of appellee is more than its property tax before the enactment of the Gross Income Tax Law does not appear, nor is it material. The action is brought by appellee for its own benefit and for those in like situation, which we assume to mean those who are engaged in interstate or foreign commerce, including farmers who sell their livestock and other produce outside the state. Whether each individual will now pay more or less tax than before will be governed by the amount of taxable property owned in proportion to gross income, and by the location of the property, since taxes for local purposes vary in different communities and in different years. Such unusual expenses of government as poor relief, in connection with the high rate of tax delinquency during depression years, tended to increase property tax rates in some communities, but such current fluctuations or differences due to temporary local conditions, or the variation in the amount of the total taxes collected for governmental purposes, cannot control or affect the result. The evident legislative purpose was to levy a tax generally [fol. 108] without discrimination against those who were engaged in whole or in part in interstate commerce. It was the purpose to broaden the tax bases in order to relieve appellee's property, and the property of all others, of what the Legislature considered an unjust burden. If appellee was not relieved of property taxes to the extent of its new burden under the Gross Income Tax Law, it is due to circumstances over which the Legislature could exert no control, since many pay taxes on gross income who paid little or no taxes on property; and, since the total taxes collected were approximately the same as before, it is obvious that property owners generally are paying no more in property and gross income taxes, but are paying less property taxes than formerly. It cannot be said that the tax is designed to, or that it does, levy upon appellee and others engaged partly in interstate or foreign commerce more than their fair proportionate share of the expense of maintaining the government under which they conduct their business.

Appellee contends that the tax upon gross income is not the same as a tax upon the value of manufactured goods,

since "there are many manufacturers, wholesalers, and merchants in Indiana whose goods are shipped almost entirely by express, parcel-post, truck or freight not prepaid, and hundreds of them, including appellee, who sell their goods in other states at a delivered price which takes into account handling, transportation, and other costs incidental to the interstate character of the business; and in every such case, the gross income tax levied on such gross receipts constitutes a direct tax and burden upon interstate commerce."

Clause (f) of section 1 of the act provides: "That the term 'gross income' shall not include cash discounts allowed [fol. 109] and taken on sales; nor freight prepaid by the taxpayer and repaid to him by the purchaser; goods, wares or merchandise, or the value thereof, returned by customers when the sale price is refunded either in cash or by credit; nor the sale price of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the 'gross income' subject to taxation under this act." The question of transportation charges included in the amount of sales, which is a basis for a determination of the tax, is not discussed in the St. Louis Case, but it is clear that here the Legislature endeavored to exclude transportation charges and other receipts of cash income which do not come to the taxpayer on account of the value of his merchandise. If, as contended, there are manufacturers, wholesalers, and merchants, who sell their goods at a delivered price outside of the state, including handling and transportation charges in the price of the goods, so that thus the handling and transportation charges become a part of their gross income upon which they are taxed, the remedy is in their own hands. They may at their option price their goods at the factory, or their place of business, and add the transportation costs. One can hardly complain of a law under which he is only burdened at his option.

The court erred in holding that the law does not authorize or require the assessment of the tax upon the gross income of appellee, and others similarly situated, derived from business conducted in interstate and foreign commerce.

Judgment reversed, with instructions to enter judgment for appellants, as indicated by this opinion.

[fol. 110] [File endorsement omitted.]

[fol. 111] IN SUPREME COURT OF INDIANA

[Title omitted]

DISSENTING OPINION—Filed April 30, 1937

TREANOR, J. Dissenting:

I concur with the first two holdings of the Court, namely (1) that that part of appellee's gross income which is received from sales to the ultimate users of appellee's products is taxable at one per cent, and (2) that the imposition of a gross income tax on interest derived from tax exempt bonds of municipal corporations does not impair the obligation of contract. I dissent from the holding and the reasoning supporting it, that a tax imposed upon gross income of appellee derived from interstate and foreign commerce, is not repugnant to the commerce provision of Article 1, Section 8 of the Constitution of the United States under the law as announced by the Supreme Court of the United States.

[fol. 112] In appraising the reasoning and decisions of the Supreme Court of the United States on this question, it is necessary to keep in view a few fundamental, and guiding rules which the Supreme Court of the United States has consistently applied when considering the question of whether a particular tax law, or tax scheme, of a state violates the interstate commerce clause of the Federal Constitution. It is obvious at the outset that no state tax law ever purports to regulate commerce among the states. Consequently it is the effect of the imposition of the tax burden which determines whether the particular tax law is such that it can be said to constitute a regulation of commerce among the states. No state, under our Federal Constitution, has the power to regulate commerce among the states, and, consequently, if the actual effect of the imposition of a particular tax burden constitutes a regulation of interstate commerce, the statute imposing the burden is invalid. On the other hand the Supreme Court of the United States consistently has recognized that if it is within the power of a state to impose a tax burden upon a particular subject of taxation, the imposition of such a tax burden is not obnoxious to the interstate commerce clause simply because there may be some indirect burden falling upon transactions

which fall within the category of commerce among the states.

In determining whether or not the burden imposed by a state tax law constitutes a regulation of interstate commerce the Supreme Court of the United States has held undeviatingly that it is a regulation of commerce if it imposes a direct burden upon such commerce; and has repeatedly stated that a tax measured by the gross receipts, arising [fol. 113] from interstate business, is such a burden as it is "by its necessary effect a tax upon such commerce, and therefore a regulation of it."¹ In so holding the Supreme Court has taken the view that any action by a state which directly interferes with free flow of commerce among the states by obstructing or burdening such flow of commerce is in legal contemplation a regulation of it. Consistently with that view the rule frequently has been stated that a tax upon gross receipts from interstate commerce is in violation of the commerce clause.

On the other hand the United States Supreme Court has held consistently that if a tax imposed is upon a subject of taxation, in respect to the taxing of which the state has untrammeled power, such tax does not offend against the commerce clause even though the effect upon the business of particular individuals or corporations may be such as to ultimately and indirectly affect their interstate transactions. In accordance with the latter view excise taxes, or taxes upon property, have been held not to violate the commerce clause even though the gross income of individuals and corporations derived from interstate transactions is used as one of the elements in determining the value of the privilege or the property which is subjected to the tax.

Appellant relies strongly upon the case of American Manufacturing Company v. City of St. Louis.² The tax in that case was held to be an excise tax upon the privilege of engaging in the business of manufacturing; and it was pointed out that gross income or receipts served as a measure of value of the privilege which was subjected to the excise tax. The tax had been imposed by the City of St. Louis under an act of the Missouri Legislature which [fol. 114] authorized that city to "license, tax and regulate

¹ Crew Levick Co. v. Pennsylvania, (1917) 245 U. S. 292.

² (1918) 250 U. S. 459.

• • • the occupation of merchants and manufacturers, and to graduate the amount of annual license imposed upon them in proportion to the sales made by such merchant or manufacturer during the year next preceding any fixed date."

To bring the instant case within the holding in the American Manufacturing Company v. City of St. Louis it would be necessary to construe the Gross Income Tax Act as imposing a privilege tax upon the occupation of manufacturing. It is clear that the General Assembly, in the exercise of the taxing power of Indiana, can impose such a tax. But I am convinced that appellee is correct in its contention that our present Gross Income Act does not impose a tax upon the privilege of engaging in the business of manufacturing. In so far as the tax in question may be considered a privilege tax, it must be treated as a tax upon the privilege of receiving gross income. In the title of the Act the tax which is being imposed is called "A tax upon the receipt of gross income;" and in Section 2 it is declared that the tax imposed is to be "measured by the amount or volume of gross income;" and that "such tax shall be levied upon the entire gross income of all residents. * * *" It was stated by this Court in Miles v. Department of Treasury,³ "that the tax in question is an excise, levied upon those domiciled within the state or who derive income from sources within the state, upon the basis of the privilege of domicile or the privilege of transacting business within the state, and that the burden may reasonably be measured by the amount of income."

Appellant relies upon Section 1-f of the Gross Income Tax Act to support his contention that the tax is "not only upon a privilege exercised wholly within the State of Indiana, but this privilege is measured by the value of the articles manufactured." The particular provision relied upon is as follows: "'That the term gross income shall not include cash discounts allowed or taken on sales. Nor freight prepaid by the taxpayer and repaid to him by the purchaser * * *'" Appellant urges that by the foregoing provision the words "gross income" are, in effect, defined to mean the value of the manufactured products at the plant. I cannot attach any such significance to the provision quoted. I think the plain intent of the language

³ (1935) 199 N. E. 372, 374, — Ind. —.

quoted from Section 1-f is to prevent the inclusion in gross income of certain items which in reality form no part of ones gross income. This is more apparent when one reads all of Section 1-f.

It is my opinion that the tax imposed by our Gross Income Act is a tax upon gross income or gross receipts. And consequently, appellants third proposition reduces itself to the question of whether that part of appellee's gross income which is derived from the sale of its products in interstate and foreign commerce is taxable under the Constitution of the United States of America. And if such part of appellee's gross income is not taxable under the Constitution of the United States, then it is not taxable by our Gross Income Tax Act which expressly exempts "so much of such gross income as is derived from business conducted in commerce between this State and foreign countries, to the extent to which the State of Indiana is prohibited from taxing under the Constitution of the United States of America."⁴ Therefore, the answer to the third question as presented by this appeal must be found in the decisions of the Supreme Court of the United States.

[fol. 116] By Article 1, Sec. 9 of the United States Constitution Congress is denied the power to levy any tax or duty "on articles exported from any state." And in the case of Peck & Co. v. Lowe,⁵ the Supreme Court was required to determine whether Section 9 was violated by a congressional act which levied a tax upon the net income derived from export sales. In reaching the conclusion that Section 9 was not violated the Supreme Court emphasized the fact that the tax was levied upon net income. The thought of the Court is expressed in the following: "The words of the act are 'net income arising or accruing from all sources.' There is no discrimination. At most, exportation is affected only indirectly and remotely. The tax is levied after exportation is completed, after all expenses are paid and losses adjusted, and after the recipient of the income is free to use it as he chooses. Thus what is taxed—the net income—is as far removed from exportation as are articles intended for export before the exportation begins.

⁴ Sec. 6(a) Gross Income Tax Act, 1933, Ch. 50.

⁵ (1917) 247 U. S. 165, 174-75.

If articles manufactured and intended for export are subject to taxation under general laws up to the time they are put in course of exportation, as we have seen they are, the conclusion is unavoidable that the net income from the venture when completed, that is to say, after the exportation and sale are fully consummated, is likewise subject to taxation under general laws. In that respect the status of the income is not different from that of the exported articles prior to the exportation."

In *Crew Levick Co. v. Pennsylvania*,⁶ the United States Supreme Court had before it "The bare question * * * whether a state tax imposed upon the business of selling goods in foreign commerce, in so far as it is measured [fol. 117] by the gross receipts from merchandise shipped to foreign countries, is in effect a regulation of foreign commerce or an impost upon exports, within the meaning of the pertinent clauses of the Federal Constitution." The Court concluded, p. 295-96, that the "imposition of a percentage upon each dollar of the gross transactions in foreign commerce" was "by its necessary effect a tax upon such commerce, and therefore a regulation of it; and, for the same reason" was "in effect an impost or duty upon its exports."

The two foregoing cases furnished the grounds of decision for the United States Supreme Court in the later case of *United States Glue Co. v. Oak Creek*.⁷ The question before the Court in that case was "whether a State, in levying a general income tax upon the gains and profits of a domestic corporation, may include in the computation the net income derived from transactions in interstate commerce without contravening the commerce clause of the Constitution of the United States." The Supreme Court assumed that the answer to the question depended upon whether the tax in question imposed a direct or indirect burden upon interstate commerce; and found the correct line of distinction illustrated in *Crew Levick Co. v. Pennsylvania* and *Peck & Co. v. Lowe*, supra. The following excerpts are from the opinion in *U. S. Glue Co. v. Oak Creek*, supra, pp. 328, 329.

⁶ (1917) 245 U. S. 292, 295.

⁷ 247 U. S. 321, p. 326.

"The difference in effect between a tax measured by gross receipts and one measured by net income, recognized by our decisions, is manifest and substantial, and it affords a convenient and workable basis of distinction between a direct and immediate burden upon the business affected and [fol. 118] a charge that is only incidental. A tax upon gross receipts affects each transaction in proportion to its magnitude and irrespective of whether it is profitable or otherwise. Conceivably it may be sufficient to make the difference between profit and loss, or to so diminish the profit as to impede or discourage the conduct of the commerce. A tax upon the net profits has not the same deterrent effect, since it does arise at all unless a gain is shown over and above expenses and losses, and the tax cannot be heavy unless the profits are large."

• • • • •

"And so we hold that the Wisconsin income tax law, as applied to the plaintiff in the case before us, can not be deemed to be so direct a burden upon plaintiff's interstate business as to amount to an unconstitutional interference with or regulation of commerce among the States. It was measured not by the gross receipts, but by the net proceeds from this part of plaintiff's business, along with a like imposition upon its income derived from other sources, and in the same way that other corporations doing business within the State are taxed upon that proportion of their income derived from business transacted and property located within the State, whatever the nature of their business."

Under the holding in *Crew Levick Company v. Pennsylvania*, *supra*, and the reasoning in the two cases of *U. S. Glue Company v. Oak Creek* and *Peck & Co. v. Lowe*, *supra*, it must be concluded that a tax upon that part of appellee's [fol. 119] income which is received from its sales in interstate and foreign commerce would constitute a direct burden upon interstate and foreign commerce, and that such a tax would violate the interstate and foreign provision of the United States Constitution as construed by the Supreme Court of the United States. And consequently it is my opinion that the legislative intent, as clearly expressed in Section 6 (a) of the Gross Income Tax Act, is not to impose a tax upon that part of appellee's gross income which

is derived from sales transactions in interstate and foreign commerce.

It is my opinion that the trial court was not in error in deciding that the Gross Income Tax Act does not impose a tax upon that part of appellee's gross income which is derived from sales in interstate and foreign commerce.

[fol. 120] [File endorsement omitted.]

[fol. 121] IN SUPREME COURT OF INDIANA

[Title omitted]

[fol. 122] APPELLEE'S PETITION FOR REHEARING—Filed June 28, 1937

J. D. Adams Manufacturing Company, appellee in the above-entitled cause, respectfully petitions the Court to grant a rehearing in said cause for the reason that the Court erred in its opinion, decision and judgment rendered April 30, 1937, in the following, to-wit:

1. The Court erred in holding that the Gross Income Tax Act of 1933 applies to and validly levies a tax upon the gross income or receipts of appellee and others similarly situated, derived from business conducted in commerce between the State of Indiana and other states of the United States or between the State of Indiana and foreign countries, since such Act (a) by the clear wording of its provisions was not intended to apply to gross income or receipts from such commerce, and (b) if so applied and construed, would contravene and be repugnant to Article 1, Section 8 and Section 10 of the Constitution of the United States, and would be an undue burden on interstate and foreign commerce in contravention of said constitutional provisions.

2. The Court erred in holding that the Gross Income Tax [fol. 123] Act of 1933 is not repugnant to Article 1, Section 8 and Section 10 of the Constitution of the United States as applied to gross income or receipts of appellee and others similarly situated, derived from commerce among the several states of the United States and with foreign countries, and that said Act is valid and applicable to the gross

income or receipts of appellee and others similarly situated, derived from such commerce.

3. The Court erred in holding that the Gross Income Tax Act of 1933 is not repugnant to Article 1, Section 10 of the Constitution of the United States as applied to the gross income or receipts of appellee and others similarly situated, from interest received on bonds of Indiana municipal corporations held by appellee, and others similarly situated, and issued prior to May 1, 1933; in holding that said Act did not impair the obligation of contract exempting such bonds from taxation; and in holding that said Act is valid and does apply to such interest receipts.

4. The Court erred in holding that the Gross Income Tax Act of 1933 is not repugnant to Article 1, Section 24 of the Constitution of Indiana as applied to the gross income or receipts of appellee and others similarly situated, from interest received on bonds of Indiana municipal corporations held by the appellee and issued prior to May 1, 1933; in holding that said Act does not impair the obligation of contract exempting such bonds from taxation; and in holding that said Act is valid and does apply to such interest receipts.

5. The Court erred in holding that the gross income or receipts of appellee and others similarly situated, derived [fol. 124] from the sale of its products to ultimate users is taxable at the rate of one per cent (1%) under the provisions of Section 3(c) of the Gross Income Tax Act of 1933 instead of at the rate of one-fourth of one per cent ($\frac{1}{4}\%$), as provided in Section 3(a) of said Act.

Respectfully submitted, Frederick E. Matson, Attorneys for Appellee. Baker & Daniels, Bamberger & Feibleman, Schortemeier, Eby & Wood, White, Wright & Boleman, Matson, Ross, McCord & Clifford, of Counsel.

[fol. 125] [File endorsement omitted.]

[fol. 126] IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—September 20,
1937

Come now the parties by counsel and the Court, being advised in the premises, denies appellee's petition for a rehearing heretofore filed herein.

Treanor, J., dissents.

Michael L. Fansler, Chief Justice.

[fol. 127] [File endorsement omitted]

IN SUPREME COURT OF INDIANA

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed November 29, 1937

To the Chief Justice of the Supreme Court of the State of Indiana:

PETITION FOR APPEAL

The petitioner, J. D. Adams Manufacturing Company, a corporation, respectfully shows that it is the appellee in the above-entitled cause, on its own behalf and on behalf of all [fol. 128] other persons similarly situated; that the Supreme Court of Indiana rendered a final decision in said cause on the 20th day of September, 1937; that said Supreme Court is the highest court of said State in which a decision in this suit can be had; that in said cause there is drawn in question the validity of a statute of Indiana on the ground that said statute is repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity; and that the petitioner considers itself aggrieved by said final decision.

Wherefore, the petitioner prays that an appeal be allowed from this Court to the Supreme Court of the United States and that the appeal bond herewith tendered by the petitioner be approved.

ASSIGNMENT OF ERRORS

The petitioner, J. D. Adams Manufacturing Company, appellee in the above entitled cause, and as appellant on appeal to the Supreme Court of the United States from the final decision and judgment heretofore entered herein, on its own behalf and behalf of all others similarly situated, assigns as error the following:

1. The Supreme Court of Indiana erred

a. in holding that the Gross Income Tax Act of 1933 (Ch. 50, Indiana Acts 1933; Ind. Stat. Ann. (Burns) 1933, Sec. 64-2601, et. seq.) is valid as applied to gross receipts of appellant and others similarly situated derived from business conducted in interstate and foreign commerce, and that the tax imposed by such Act on such gross receipts is not invalid as constituting an illegal burden on such commerce [fol. 129] and an impost or duty upon exports, in conflict with Article I, Section 8 and Section 10 of the Constitution of the United States;

b. in refusing to hold that said Act when applied to gross receipts of appellant and others similarly situated derived from commerce among the several states and with foreign nations, is repugnant to Article I, Section 8 and Section 10 of the Constitution of the United States as imposing an illegal burden upon such commerce and a duty or impost upon exports; and

c. in reversing the judgment of the trial court, and holding that said Act is valid and authorizes and requires the assessment and collection of the tax upon the gross receipts of appellant, and others similarly situated, derived from business conducted in interstate and foreign commerce.

2. The Supreme Court of Indiana erred

a. in holding that the Gross Income Tax Act of 1933 (Ch. 50, Indiana Acts 1933; Ind. Stat. Ann. (Burns) 1933, Sec. 64-2601, et seq.), in imposing a tax upon gross receipts of appellant and others similarly situated derived from interest on tax-exempt bonds of Indiana municipal corporations issued prior to the effective date of the Act, does not impair the obligation of the statutory contract existing between the issuing municipalities and the holders of such

[fols. 130-131] bonds, in conflict with Article I, Section 10 of the Constitution of the United States;

b. in refusing to hold that said Act, as applied to the gross receipts of appellant and others similarly situated consisting of interest on tax-exempt bonds issued by Indiana municipalities prior to the effective date of the Act, impairs the obligation of contract with the owners of such bonds and is repugnant to Article I, Section 10 of the Constitution of the United States; and

c. in reversing the judgment of the trial court, and holding that said Act is valid and authorizes and requires the assessment and collection of the tax upon the gross receipts of appellant, and others similarly situated, derived from interest on such tax-exempt bonds.

PRAYER FOR REVERSAL

For which errors J. D. Adams Manufacturing Company, a corporation, as appellant on said appeal, on its own behalf and in a representative capacity in behalf of all other taxpayers, citizens and residents of Indiana or elsewhere who are similarly situated, prays that the said judgment of the Supreme Court of Indiana finally rendered on September 20, 1937, in the above-entitled cause be reversed and a judgment ordered in favor of appellant and for costs.

Dated this 29th day of November, 1937.

Frederick E. Matson, Harry T. Ice, Attorneys for Appellant.

[fol. 132] IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 29, 1937

The petition of J. D. Adams Manufacturing Company, appellee in the above-entitled cause, for an appeal in said cause, on its own behalf and in a representative capacity in behalf of all other taxpayers, citizens and residents of Indiana or elsewhere who are similarly situated, to the Supreme Court of the United States from the judgment of [fol. 133] the Supreme Court of Indiana, having heretofore been filed with the Clerk of this Court and presented

herein and accompanied by assignment of errors, prayer for reversal of the judgment, an appeal bond, and a statement as to jurisdiction, all as provided by the statutes and the Rules of the Supreme Court of the United States, and the record in this cause having been considered and the decision therein to be appealed from constituting a final judgment of the highest court in the State in which a decision in said suit can be had, and it appearing that in this cause there is drawn in question the validity of a statute of the State of Indiana on the ground that it is repugnant to the Constitution of the United States, and said decision being in favor of the validity of such statute;

It is Therefore Ordered that an appeal be and hereby is allowed to the Supreme Court of the United States as prayed for in said petition, and the Clerk of the Supreme Court of Indiana is hereby ordered and directed within forty days from this date to make and transmit to the Clerk of the Supreme Court of the United States under his hand and the seal of this Court a true, full and complete copy of all material parts of the record herein which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with the applicable statutes and the Rules of the Supreme Court of the United States.

It is Further Ordered that the cost bond of petitioner J. D. Adams Manufacturing Company, as appellant in said appeal, in the sum of One Thousand Dollars (\$1,000.00) is a good and sufficient bond that said appellant shall prosecute said appeal to effect and answer all costs if it fails to make its plea good, and the same is hereby approved.

Dated this 29th day of November, 1937.

Walter E. Treanor, Chief Justice of the Supreme Court of Indiana.

[fol. 134] [File endorsement omitted.]

[fols. 135-146] Bond on appeal for \$1,000.00, approved and filed November 29, 1937, omitted in printing.

[fols. 147-153] Citation, in usual form, showing service on Omer S. Jackson et al., filed November 29, 1937, omitted in printing.

[fol. 154] IN SUPREME COURT OF INDIANA

[Title omitted]

PRÆCIPLE FOR TRANSCRIPT OF RECORD—Filed November 29,
1937

To the Hon. Paul Stump, Clerk of the Supreme Court of Indiana:

Please include the following papers in the transcript of the record in the above entitled cause to be transmitted to the Supreme Court of the United States pursuant to the allowance of appeal thereto in this cause. Also indicate as to all papers filed in your office the date of the filing of the same.

1. The transcript of record filed in your office which [fol. 155] shows inter se:

- (a) Plaintiff's Complaint;
- (b) Summons;
- (c) Return on Summons;
- (d) Appearance;
- (e) Answer of Defendants;
- (f) Finding of Court;
- (g) Judgment of Court;
- (h) Defendants' Motion for New Trial;
- (i) Motion for New Trial Overruled;
- (j) Appeal Granted;
- (k) Præcipe for Transcript;
- (l) Bill of Exceptions; Plaintiff's Exhibit No. 1, Stipulation of Facts;
- (m) Certificate of Court Reporter;
- (n) Certificate of Judge;
- (o) Certificate of Clerk;
- (p) Assignment of Errors.

2. The following portion of appellants' printed brief in the Supreme Court of Indiana, specifying the points to be relied on for reversal, appearing under the heading of "Propositions, Points and Authorities", and including particularly the heading and first literal paragraph on page 51 of said brief, and all of that part of said brief following and including the heading "Proposition II", beginning on page 54 of said brief and extending to and including all of page 60 of said brief.

3. Decision and order reversing judgment of trial court, and the opinion of Fansler, J. for the majority of the Supreme Court of Indiana, and the dissenting opinion of Treanor, J. in said cause, rendered May 3, 1937.
4. The appellee's petition for rehearing.
5. The order of September 20, 1937 denying the petition [fol. 156] for rehearing.
6. Petition for appeal to the Supreme Court of the United States, assignment of errors and prayer for reversal.
7. Order allowing said appeal and approving cost bond.
8. Cost bond and approval thereof.
9. Citation and proof of service thereof.
10. Proof of service of appeal papers.
11. This praecipe for transcript.
12. Any stipulation or orders settling the record.
13. Copy of the Regulations of the Gross Income Tax Division promulgated under the Gross Income Tax Act of 1933, on July 31, 1934, including Regulation 193 approved December 31, 1935.
14. Your certificate as to the record.
15. Statement as to jurisdiction of the Supreme Court of the United States filed with said petition for appeal, said statement to be separately certified to.

Frederick E. Matson, Harry T. Ice, Attorneys for Appellee, J. D. Adams Manufacturing Company.

Acknowledgment of Service

Receipt of a copy of the above praecipe for transcript of record is acknowledged this 29th day of November, 1937.

Omer Stokes Jackson, Attorney General of Indiana; Joseph W. Hutchinson, Deputy Attorney General of Indiana; Joseph P. McNamara, Deputy Attorney General of Indiana, Attorneys for Appellants.

[fol. 157] [File endorsement omitted.]

[fol. 158] THE DEPARTMENT OF TREASURY OF INDIANA

REGULATIONS PROMULGATED UNDER THE GROSS INCOME TAX
ACT OF 1933

Gross Income Tax Division

Clarence A. Jackson, Director

[fol. 159] ~

Foreword

These regulations are designed to assist the taxpayer in accurately reporting to the Department his true gross income and are issued by virtue of the authority vested in The Department of Treasury by the gross income tax Act, and will have the same force and effect in the application of the gross income tax law as the Act itself. Necessarily, these regulations must be more or less general and it must not be assumed that they cover every conceivable situation that might arise in regard to the taxability or ownership of income, or the legality of exemption thereof. Intricate questions should be submitted in writing to the Legal Department of the Gross Income Tax Division for specific rulings.

The taxpayer is reminded that the burden of responsibility for filing his tax returns and accurately reflecting his true gross income thereon is strictly imposed upon himself and it is the intention of the Department to assist him by these regulations and by specific rulings when requested.

C. A. Jackson, Director, Gross Income Tax Division.

[fol. 160]

Art. 1—Definitions

Regulations

Article 1

Definitions

Regulation 1. Person as defined in Section 1 (a) includes any individual, firm co-partnership, joint venture, association, corporation, municipal corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

Reg. 2. Taxpayer.—Any resident of the State of Indiana, any non-resident corporation qualified to and engaged in

business with the State of Indiana, and/or any "person" as defined in Regulation 1, resident or non-resident, engaged in business within or receiving income from within the state.

Reg. 3. Tax Year or Taxable Year means either the calendar year, or the taxpayer's fiscal year if and when permission is obtained from The Department of Treasury to use the taxpayer's fiscal year as the tax period in lieu of the calendar year.

Reg. 4. Tax Period as hereinafter used refers to either a calendar or a fiscal year or a quarterly period of either of such years, and in case a return is made for a fractional part of the year, "tax period" will be deemed to mean the period for which such return is made. However, in no case can a return be filed covering a period of more than twelve months.

Reg. 5. Fiscal Year means any accounting period of twelve months ending on the last day of any month other than December.

[fol. 161] • Reg. 6. Gross Income consists of the gross receipts as hereinafter defined, from any business, together with any other moneys (not including borrowed money) or properties received from any and all other sources and from other activities, without deduction for expenses, for costs of goods sold, or amount of property left on hand.

Reg. 7. Gross Receipts.—The amount received either in money or property, or both, from a transfer of possession of any tangible or intangible property, personal service, interest, discount, rents, royalties, bonuses, fees, commissions and other emoluments however designated.

Reg. 8. Gross Earnings.—Gross earnings will be deemed to be the gross income of certain businesses and institutions as hereinafter set forth. (See Regulation 89.)

Reg. 9. Sale.—(a) Executed—A transfer of title to property for a fixed price in money or money's worth.

(b) Conditional—A sale based on a contract, the title of the property remaining in the seller until terms of the contract have been complied with.

(c) Retail—A sale made direct to the user or consumer.

(d) Wholesale—A sale made to another for resale.

Reg. 10. Individual.—An individual taxpayer is a person who is required to file a return in his own individual right. One who has control of property belonging only to himself and no other.

Reg. 11. Co-partnership.—A partnership is a fact and not a theory. A partnership is composed of two or more individuals associated together for the purpose of carrying on a given business or a given business transaction and is a business organization in which every partner possesses full power to bind all the partners by his act, [fol. 162] and in which each partner is responsible for the debts of the partnership. Partnerships are not subject to tax, but the partners are taxed on their respective gross receipts. Joint investment in and ownership of real and personal property not used in the operation of any trade or business and not covered by any partnership agreement does not constitute a partnership.

Reg. 12. Firm.—A firm includes persons composing a partnership collectively and refers to the title under which the members of a partnership transact business.

Reg. 13. Dividend.—For the purpose of this Act the word "dividend" means any distribution made by a corporation out of its earnings or profits to shareholders or members in cash or property (except additional stock of the declaring corporation).

Reg. 14. Joint Venture.—A joint venture is a joint investment by two or more persons in an ownership of property not used in the operation of any trade or business and not governed by any partnership agreement.

Reg. 15. Fiduciary.—The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, commissioner, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

Article 2

General Scope and Application of Tax

The Gross Income Tax Act of 1933 is primarily and in effect a gross receipts tax applying to the gross receipts of every taxpayer under the Act from all sources without

allowances, or deductions for costs, expenses or dependents, and is, therefore, in no way a net income tax. It applies to income from sales of all kinds of property or commodities in business and in this case is measured by the gross income derived from such sales. In this respect and to this extent it operates as a sales tax. There are not two separate and distinct laws in Indiana—that, is a gross income tax and a sales tax—whatever elements of a sales tax there might be are embodied in and made a part of the gross income tax law.

Administration of the Act. The administration of the Gross Income Tax Act is vested in The Department of Treasury of Indiana under the jurisdiction of the Treasurer of State as the Chief Administrative Officer. The Gross Income Tax Division of The Department of Treasury is under the direct administration of C. A. Jackson, Director, with offices at 141 South Meridian St., Indianapolis, Indiana.

Reg. 16. Effective Date of Law.—Tax shall apply to and shall be levied and collected upon all gross income received on or after the first day of May, 1933, regardless of the fact that such income was earned or became due prior to that date.

Reg. 17. To What Tax Applies.—The entire gross income from sales, salaries, wages, rentals, commissions, dividends, royalties, and from any source whatever, of every person named in Reg. No. 1 and Reg. No. 2 in excess of \$1,000 a year, except such income as is specifically excepted under the Act or hereinafter designated as being exempt from taxation.

Reg. 18. Method of Payment.—Taxpayers must fill out forms as designated in Reg. No. 167 reflecting their true gross income thereon and transmit such forms properly [fol. 164] executed to The Gross Income Tax Division, 141 South Meridian St., Indianapolis, Indiana. All returns must be notarized before a duly commissioned notary public or some official authorized by law to administer oaths.

Reg. 19. Where Forms May Be Obtained.—All forms may be obtained upon request from The Gross Income Tax Division, 141 South Meridian St., Indianapolis, Indiana, or from the various automobile license bureaus in the several counties and from other distribution points.

Reg. 20. Tax Remittances.—All returns must be accompanied by a remittance for the tax reflected on the return. Checks should be made payable to the Gross Income Tax Division. Express money orders may be purchased at auto license bureaus. Cash or currency should be sent by registered mail. Remittances may be made by check, money order, or draft. However, collection expenses on remittances of this kind will not be borne by the state and no taxpayer's tax will be considered paid until such check or draft has been cleared.

Article 3

Income and Rates

Reg. 21. Income from Sales.—Gross income derived from sales is taxable at the following rates:

From sales made to consumer—1% (See Reg. No. 9-c).

From sales made for resale— $\frac{1}{4}$ of 1% (See Reg. No. 9-d).

Reg. 22. Other Income.—Income from salary, wages, bonuses, rentals, commissions, royalties, dividends, fees, service charges, and other income not specifically provided for, will be taxed at the rate of 1%.

[fol. 165] **Reg. 23. Source of Income.**—Source or nature of income may govern the classification of the income as to its taxability or exemption and in some cases determines the rate of tax that will apply.

In general, income is derived from the following sources and is taxed at the rate specified:

Commissions	1%	Salaries	1%
Contracts	1%	Sales, retail	1%
Discounts	1%	Sales, wholesale $\frac{1}{4}$ of 1%	
Dividends	1%	Service charges	1%
Fees	1%	Storage charges	1%
Interest	1%	Sub-contracts $\frac{1}{4}$ of 1%	
Premiums	1%	Tuitions	1%
Rentals	1%	Utility charges	1%
Royalties	1%	Wages	1%

Exemptions

Reg. 24. Exemption by Periods.—Each taxpayer is entitled to an exemption of \$1,000 for a full year of twelve

months, which exemption may be taken only on annual returns. Upon quarterly returns \$250 is the maximum exemption allowed. Exemptions for other periods are allowed according to the duration of such period at the rate of \$83.33 per month. A fraction of a month shall be disregarded unless, such fraction exceeds half a month, in which case it shall be taken as a whole month.

Taxpayers having classes of income taxable at different rates may deduct the entire exemption from the 1% column, and if the exemption exceeds the total income in that class the remainder thereof may be taken from the $\frac{1}{4}$ of 1% column.

Reg. 25. New Residents.—Termination of Residence. Taxpayers moving out of or into the state may take only [fol. 166] the exemption covering the period of their residence in the state in any taxable period at the rate of \$83.33 per month.

Reg. 26. Marriage or Dependents.—No additional exemption is provided on account of marriage or dependents.

Reg. 27. When No Returns are Required.—No returns shall be required from persons not subject to any tax liability hereunder in the taxable year, except information returns as required by Regs. 78 and 166.

Article 5

Exclusions

Reg. 28. Definition.—“Exclusions” are deemed to be items received as gross income which are exempt by reason of specific exemption granted by the Act or the department’s regulations.

Reg. 29. Specific Exclusions.—Gross income tax will not be imposed on the following items of income and taxpayers will not be required to include such items in their report, or if included in Schedule A of the return the same may be deducted under Schedule 2: (See Article 13.)

(1) Amounts received by beneficiaries under insurance policies by reason of death of the insured. (See Reg. 57.)

(2) Amounts received other than amounts paid by reason of the death of the insured, under life insurance endowment or annuity contracts, either during the term or at maturity

or upon surrender of the contract, but in no case in excess of the total amount of the premiums paid upon such contracts. (See Reg. 58.)

(3) Money received as salary and other emoluments from the United States government or any of its regular and essential departments paid in connection with a regular and continuous official position. (See Reg. 61.)

[fol. 167] (4) Receipts from sale of and interest on United States government bonds or possessions of the United States. (See Reg. 62.)

(5) Money received from sale of municipal bonds or bonds of any sub-division of the State of Indiana. (See Reg. 62.)

(6) Receipts by reason of maturity of bonds and of preferred stocks. (See Reg. 62.)

(7) Money received as agent. (See Reg. 65.)

Article 6

Deductions

Rég. 30. Definition.—“Deductions” as herein used refers to the subtraction of non-taxable amounts (shown in Schedule 2 of the return) from amounts in Schedule A and can only be taken when the same amounts have been included in such Schedule A. However, for the purpose of checking and auditing, certain non-taxable receipts are required to be reported and deducted on the same return. Deductions must be made on the same returns upon which the deductible amounts have been included and not upon subsequent quarterly returns. However, proper deductions of non-taxable income not previously taken on quarterly returns may be made on the annual return. Any amounts not required to be reported at all are properly called “exclusions.”

Reg. 31. Specific Deductions.—The following items must be reported in Schedule A of the taxpayer's return and deducted therefrom under non-taxable items listed in Schedule 2 of the same return. Every deduction must be set out and fully explained upon the return or upon a separate sheet attached thereof: (See Article 14.)

- (1) Allowances on returned goods when the sales price [fol. 168] is refunded to the customer, either in cash or by credit.
- (2) Cash discounts allowed and taken on sales. (See Reg. 66.)
- (3) Money received by the shipper in repayment of freight charges when prepaid as such. (See Reg. 67.)
- (4) The sales price of any article accepted as part payment on any new article sold if and when the full sales price of the new article has been included for gross income taxation. (See Reg. 72.)
- (5) Traveling expenses as limited in Reg. 68.
- (6) Taxes collected as agent for the state or federal government. (See Reg. 69.)
- (7) Receipt of outright gifts. (See Reg. 70.)
- (8) Pensions under limitations set out in Reg. 71.

Article 7

Tax Periods

Reg. 32. Calendar Year.—Taxpayers will be required to file on the basis of the calendar year unless they are granted permission by the department to file on the basis of their fiscal year.

Reg. 33. Fiscal Years.—Taxpayers transacting business upon the basis of their fiscal year may be granted permission to file returns and pay tax upon such basis upon application being made to the department of treasury upon Form No. 100-L, and upon approval of the application, Schedule 102-L will be furnished the taxpayer, upon which will be designated the return dates of all subsequent quarterly and annual returns.

Reg. 34. Partnership Firms.—Members of partnership firms which have been granted permission to file returns on the fiscal year basis may upon request be allowed to file [fol. 169] their individual returns upon such basis to correspond with the firm's fiscal year, subject to the permission, approval and direction of the department of treasury.

Reg. 35. Tax Periods on Calendar Basis.—

Annual.—On annual returns the tax periods shall be from January 1st to December 31st, inclusive.

Quarterly:

1st quarter—January, February and March.

2nd quarter—April, May and June.

3rd quarter—July, August and September.

4th quarter—October, November and December (annual).

Reg. 36. Tax Periods on Fiscal Year Basis.—

Annual.—On annual returns the tax period shall be for a period of twelve months ending on the last day of the taxpayer's fiscal year.

Quarterly.—Quarterly periods on the fiscal year basis shall be those designated for such taxpayers on Form 102-L.

Reg. 37. Fourth Quarterly Return Included in the Annual Return. In every case, whether on calendar or fiscal year basis, the fourth quarterly return shall be an annual return and shall reflect the taxpayer's gross income for the entire annual tax period notwithstanding that returns have been made for quarterly periods and tax paid thereon. No separate return for the fourth quarterly period shall be required. From the gross income reflected on the annual return the taxpayer is entitled to the annual exemption of \$1,000 and tax will be computed upon the balance. From such computed tax reflected on the annual return, tax payments made for any quarterly period included therein may be deducted. Any return made because of the death of a taxpayer, dissolution or withdrawal of a [fol. 170] corporation, or the filing of a final report by a fiduciary, will be considered an annual return and shall reflect all gross income of the taxpayer received from the beginning of the year, either calendar or fiscal, to the date of the death, dissolution, withdrawal, or filing of final report, and upon all such returns exemption may be taken at the rate of \$83.33 per month from the date of the beginning of tax liability in the taxable year to the end of such year regardless of the unexpired portion thereof.

Individuals terminating their residence in the State of Indiana will be allowed only the amount of exemption proportionate to the actual duration of their residence in any taxable year as set out in Reg. 25.

Article 8

Due Dates of Tax and Returns

Reg. 38. Tax Returns—

Annual.—Annual returns will be due on or before the 30th day of January if taxpayer is reporting on the calendar year basis, or on or before the 30th day following the closing date of the fiscal year if the taxpayer is reporting on that basis. Annual returns must be filed by all taxpayers whose taxable gross receipts are in excess of \$1,000.

Quarterly.—Quarterly returns on the calendar year basis will be due on or before the following dates:

1st quarter—April 15th.

2nd quarter—July 15th.

3rd quarter—October 15th.

4th quarter—January 30th (annual).

[fol. 171] If taxpayer is reporting on a fiscal year basis quarterly returns will be due as designated upon Schedule 102-L. (See Reg. 36.)

Reg. 39. Information Returns.—Information returns required by Reg. No. 166 will be due annually on the 15th day of February.

Reg. 40. When Quarterly Returns Are Mandatory.—Quarterly returns are mandatory only for those quarters, both fiscal and calendar, in which the taxpayer's tax exceeds \$10. Each quarter is a tax period in itself, and the fact that a taxpayer must file a quarterly return in one quarter does not of itself require returns for other quarters in which his computed tax may be \$10 or less. The department will not waive the requirement for quarterly returns in cases where the taxpayer's computed tax is in excess of \$10.

While quarterly returns are not mandatory, except when tax is more than \$10, any taxpayer choosing to file returns and pay tax by quarterly periods may do so at his option.

Reg. 41. Extensions of Time.—Taxpayers must file their returns on or before the due dates as set out in Reg. 38 to avoid assessment of penalties. Extensions of time for filing returns will be granted by the Department of Treas-

ury for good cause when application is made therefore on or prior to the last due date. Application for extensions of time for filing gross income returns must be addressed to The Gross Income Tax Division At Indianapolis, Indiana, must contain a full recital of the cause for delay, and must be in writing over the signature of the taxpayer or his agent.

No blanket extension covering all tax periods in a taxable year will be granted, but application must be made [fol. 172] for each tax period for which a return is to be made, on or before the last due date of returns for such periods.

No extension can be granted beyond the 15th day of the month next following the last regular due date.

In case the taxpayer does not avail himself of the extension granted but files his return subsequent to the date of such extension, he will be deemed to be delinquent from the returns will be granted by the Department of Treasury for last regular due date and it will not be assumed that the regular due date has been extended. Therefore, in such cases interest, penalties and notices as provided by law will operate as of the regular due date and not the date to which extension was granted.

The extreme dates to which extensions can be granted taxpayers filing on the calendar year basis are as follows:

1st Quarterly Return due April 15th—Extension May 15.

2nd Quarterly Return due July 15th—Extension August 15th.

3rd Quarterly Return due October 15th—Extension November 15th.

4th Quarterly Return (Annual Return) due January 30th—Extension February 15th.

Information at Source Returns due February 15th—Extension March 15th. (See Reg. 166.)

Article 9

Corrections on Returns

Reg. 42. Amended Returns.—No gross income tax return when once filed will be returned to the taxpayer for correction, but whenever any taxpayer discovers or is informed by the department that his gross income has been erroneously reported, correction may be made by

filing an amended return, which shall be plainly marked on its face "Amended Return" and which shall reflect the taxpayer's correct gross income in the proper columns and in the correct amounts as it should have been originally reported by him.

If such amended return shows additional tax due, remittance for such additional amount must accompany the amended return, and if upon examination such amended return shows an overpayment of tax, the amount of such overpayment will be credited against any tax due on any subsequent return for the taxable year and any balance or excess at the end of the year, and upon the filing of an annual return will be refunded to the taxpayer having made such overpayment, or to his estate as the case may be.

Reg. 43. Refund of Overpayment.—No claim for refund of tax will be considered unless the taxpayer claiming such refund has made application to the department of treasury upon Form 111-L. This form must set forth the amount of overpayment claimed, the period covered by the return upon which the overpayment was made, and shall fully set forth the reasons upon which the claim is based. Statements of claims for refunds must be executed by the persons to whom the claim is alleged to be due. Corporation claims must be made in the name of the corporation and executed by an officer thereof. Fiduciaries will be required to furnish certified copies of their appointment to accompany claims for refund of taxes not paid by them in their fiduciary capacity.

If upon examination of any return or statement of claim the department of treasury finds that the facts entitle the [fol. 174] taxpayer to a refund of any amount, voucher Form No. 110-L stating the amount found to be due will be transmitted to the taxpayer, and upon its return to the department of treasury, duly verified and executed, payment will be made thereon.

Article 10

Income Taxable at Different Rates

Reg. 44. Taxpayers' Books and Records.—Every taxpayer will be required to keep such records of his gross income as will accurately reflect the same and such evidence of gross income as will be necessary for him to determine

the amount of tax for which he is liable under the provisions of this Act. And it shall be the duty of every such person to keep and preserve such records for a period of two years, and all such records shall be open for examination at any time by the department of treasury or its duly authorized agents.

Reg. 45. Separation of Income.—Any taxpayer receiving gross income taxable at different rates, i. e. a part of which is taxable at 1% and a part at $\frac{1}{4}$ of 1%, will be required to separate such receipts upon his books as to the class in which each will be reported; otherwise the 1% rate will apply to the entire amount of gross income. Such segregation shall be subject to the review of the department of treasury as provided by law.

Reg. 46. Rates of Utilities.—A division of retail and wholesale sales may not be made by taxpayers engaged in the business of producing, transmitting, wholesaling and/or retailing electrical energy; or procuring, transporting, wholesaling and/or retailing artificial gas, or mixtures of artificial and natural gas, operating a steam and/or electric [fol. 175] railway, street car line, motor vehicle, steam or motor boat, or any other vehicle for the transportation of freight, express and/or passengers for hire; operating a pipe line for the transportation of any commodity for hire; operating any telephone and/or telegraph line; operating any water or sewer system; or operating any other utility not expressly provided for elsewhere, but a tax will be imposed upon all receipts therefrom at the rate of 1%.

Article 11

Rates of Manufacturers and Other Industries

Under Section 3-a-b-c

Reg. 47. Wholesale and Retail Sales.—While Section 3 (sub-sections a-b-c) reflects the rate at which the gross income of manufacturers, wholesalers, retailers, jobbers and taxpayers of other occupations shall be taxed, it is held by the department of treasury that no taxpayer continues to hold a rate classification as set out in the above section when property is disposed of in a different manner

than that in which it is ordinarily disposed of by taxpayers in that particular class. Therefore, any taxpayer mentioned in Section 3 (a or b) will be deemed to be selling at retail whenever a product is disposed of direct to the consumer and the receipts therefrom will be taxable at the rate of 1%. Likewise a taxpayer engaged in the business of disposing of goods at retail will only be taxed at $\frac{1}{4}$ of 1% upon such property sold by him to be resold.

Article 12

Certain Sales Defined as Wholesale and Retail

Reg. 48. Wholesale Sales.—Wholesale sales are defined by the department as being any sales made to another for resale regardless of price or quantity, and whenever the [fol. 176] taxpayer can show that the purchaser is buying an article for the purpose of reselling it, it will be deemed to be a wholesale sale and $\frac{1}{4}$ of 1% rate will apply.

Reg. 49. Sales of Seed, Feed, and Growing Plants or Livestock to Agriculturists.—The gross receipts from the sale of seed, feed, growing plants or livestock to anyone engaged in the business of agriculture, production of livestock, poultry, eggs or any other product of the farm, orchard, garden or greenhouse will be included as gross income and a tax imposed thereon at the rate of $\frac{1}{4}$ of 1%. This would apply to the proceeds from the sale of seed, feed, growing plants or livestock, even though the sale was made to a taxpayer engaged in the same business, unless from the nature of the sale made it is readily determined that the article sold is intended to be consumed by the purchaser, then the gross receipts therefrom will be taxable at 1%.

While Section 3(a) of the gross income tax Act provides: "Upon the entire gross income of every person engaged in the business of * * * or in agriculture, including the production of livestock, poultry, eggs or any other product of the farm, orchard, garden or greenhouse, one-fourth of one per cent," it is held that a sale made directly to a consumer is a sale at retail and tax will be imposed on the gross receipts from such sale at the rate of 1%.

Reg. 50. Sales to Manufacturers, Utilities and Service.—(a) The rate of $\frac{1}{4}$ of 1% will apply to gross receipts of taxpayers, (other than those named in Section 3-d) from

sales of commodities to any utilities named in Section 3-d which commodities are to be consumed by such utilities in production, transmission or operation. This rate will also apply to gross receipts from sales or articles or commodities to manufacturers which articles or commodities become an integral part of, or are consumed in the completed manu-[fol. 177] facture of any article for sale. However, this will not apply to receipts from sales of any items which would be classified as capital items such as equipment, machinery, furniture, etc., but receipts from the sales of such items will be considered as from sales to the user and will be taxable at the rate of 1%. The word "consumed" as used herein shall not mean or include the obsolescence, depreciation, or wear occasioned by the use or age of equipment or furnishings of buildings, machinery, tools or articles, used either on the interior or exterior of any plant or building used by a manufacturer or a utility.

(b) Sale of Tools, Dies, etc., to Manufacturers.—The gross receipts from the sale of tools, molds, dies and patterns to a manufacturer for the purpose of manufacturing special articles are to be considered as having been consumed in the manufacture of such special articles when such tools, molds, dies and patterns do not have a useful life beyond the manufacture of such special articles and will be taxable at the rate of $\frac{1}{4}$ of 1%. However, if such tools, molds, dies and patterns, even though purchased to be used in the manufacture of special articles, are such tools, molds, dies and patterns which would have a longer useful life and could be used in general manufacture, then they will be considered capital items as all general tools, molds, dies and patterns, and the gross receipts from the sale thereof to such manufacturer will be taxable at the rate of 1%.

(c) Sales to Industries or Persons Rendering Service.—Sales of materials to trades, industries or persons engaged in rendering services, which materials are used only in or incidental to the rendering of such services, will be deemed to be sales at retail and the receipts therefrom taxable at 1%. [fol. 178] Department Regulation No. 50, approved July 31, 1934, is hereby revoked and superseded by this revision and amendment (Approved: November 1, 1935.)

Reg. 51. Sales by Materialmen to Contractors.—If a contractor enters into a contract to build a structure com-

plete for a stipulated sum or purchases materials for the purpose of erecting any structure, for resale, the material sales to such contractor shall be considered wholesale and receipts from such sales will be taxed at $\frac{1}{4}$ of 1%.

If a building contractor enters into a contract to build a structure, the material to be furnished by the owner, the material sales to such owner shall be considered as retail and the receipts therefrom will be taxable at 1%.

If a building contractor enters into a contract to build a structure on a per diem or percentage basis, the material to be furnished by the owner, such material sales shall be considered as retail and the receipts therefrom will be taxable at 1%.

Reg. 52. Sales by Materialmen to Individuals.—All material sold by materialmen to individuals shall be considered as sold at retail and the receipts therefrom will be taxable at 1%.

Reg. 53. Ice Dealers.—When ice is sold to a retail merchant whose sole use of such ice is for the preservation of food products, which vendee has for sale, such sales of ice shall be considered as wholesale sales, and shall be included in gross receipts taxable at the rate of $\frac{1}{4}$ of 1%, but all receipts from sales made direct to the consumer must be included for taxation at the rate of 1%.

Reg. 54. Sales to State or Sub-Divisions.—All sales to the State of Indiana or other states or any sub-division of either will be considered as sales to the consumer and the [fol. 179] receipts therefrom must be reported as receipts from retail sales and taxable at the rate of 1%.

Reg. 55. Sales of Real Estate.—All gross receipts from sales of real estate must be reported for taxation at the 1% rate.

Reg. 56. Sales to Restaurants.—Taxpayers selling produce or any article to be served with or as meals sold to the public will be considered as selling such produce or materials at wholesale and gross receipts from such sales will be taxable at the rate of $\frac{1}{4}$ of 1%.

Article 13

Regulations Applying to Exclusions under Article 5

Reg. 57. Death Benefits.—The receipt of proceeds from life insurance policies received by an estate, trust or indi-

vidual beneficiaries of an insured by reason of the death of the insured is not taxable income whether received in a single sum or in installments. However, if such proceeds are held by the insurer for the beneficiary under an agreement to pay interest thereon such interest will be considered taxable gross income when received, credited or made available for withdrawal.

Reg. 58. Annuities.—Except as provided in Reg. 57 any amounts received on life insurance endowment or annuity contract, either during the term or at the maturity of, or upon surrender of the contract will be considered taxable income for the amount which is in excess of the premiums paid upon such contracts.

Reg. 59. Disability Insurance.—

(a) **Life Insurance Policies.**—Taxpayers receiving disability benefits upon life insurance policies with disability provisions will be required to list such amounts for taxation [fol. 180] without regard to premiums paid in.

(b) **Industrial Board Awards.**—Amounts received on account of awards by industrial boards for injury and disability will be taxable under the gross income tax Act and the entire amount must be reported for taxation without deduction for medical or other expenses.

(c) **Health and Accident Policies.**—Proceeds received from health and accident policies shall be considered taxable gross income and the entire amount must be included in the gross income tax returns of the policyholder for taxation.

(d) **Insurance Policy Dividends.**—See Reg. No. 107 (b).

Reg. 60. Property Insurance.—If the proceeds from an insurance policy covering loss or damage to property is used in replacing property of like kind the amounts so applied will not be included in the gross income tax return. However, if such amounts are otherwise applied they shall be included in gross income tax returns for taxation.

Reg. 61. Money received as salary or other emoluments in connection with regular employment by an essential and continuous department of the Federal government, will not be taxable. Persons performing special services for tem-

porary agencies which are not strictly Federal governmental instrumentalities are not exempt.

Reg. 62. U. S. Bonds and Municipal Bonds.—Exemption from gross income tax on non-taxable bonds extends only to the receipts from sale or transfer, and when such bonds are accepted for the full amount or part of the selling price for property, services, or in lieu of cash for any income the person accepting the bonds will be considered to have taxable gross receipts for the accepted value of the bonds.

[fol. 181]	Kind of Security	Proceeds on Maturity	Proceeds from sale of	Interest on
U. S. Government Bonds.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
Federal Land Bank.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
Joint-Stock Land Bank.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
U. S. Treasury Certificates.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
H. O. L. C. Bonds.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
Indiana Agricultural Bonds.....	Non-taxable	Non-taxable	Non-taxable	Non-taxable
Municipal Bonds.....	Non-taxable	Non-taxable	Non-taxable	Taxable
County Gravel Road.....	Non-taxable	Non-taxable	Non-taxable	Taxable
All other bonds issued as non-taxable by subdivision of the State of Indiana.....	Non-taxable	Non-taxable	Non-taxable	Taxable
National Guard Armory.....	Non-taxable	Taxable	Taxable	Taxable
Corporation Bonds.....	Non-taxable	Taxable	Taxable	Taxable
Postal savings.....				

Reg. 63. Bonds of United States Possessions.—Bonds issued by a municipality or a school board of Porto Rico under the authority of an act of the legislative assembly of the Porto Rico, approved February 19, 1913, which provides for the approval by the executive council of Porto Rico as a prerequisite to the issuance of such obligations and which pledges the good faith of the people of Porto Rico as security for their payment, are held to be obligations of a possession of the United States, the interest upon which is exempt from income tax.

The principal of bonds issued by the people of Porto Rico is exempt from taxation by the United States under the act of congress approved March 2, 1917. The interest derived from such bonds is exempt from income, war profits and excess profits taxes under the provisions of Section 213 (b), [fol. 182] revenue act of 1918.

Any possession of the United States includes, among others, Porto Rico, the Philippines and the Virgin Islands, Alaska and Hawaiian Islands.

Reg. 64. Contracts with United States Government.—Money received in payment for performance of construc-

tion contracts or rental contracts with the United States government, its departments or agencies will not be deemed to be money received from sales as any emolument paid by the government or its agencies, and all receipts from such contracts must be included for gross income taxation.

Reg. 65. Money Received as Agent.—Money or property received by a taxpayer in which he has no right, title or interest, but is received as agent for a third party or parties, will not be included in the taxpayer's individual return of gross income, but any commission received by him for his services as agent must be included as taxable gross income. However, when property is handled on consignment the consignee must report the entire proceeds therefrom and pay tax thereon as set out in Reg. No. 173.

Article 14

Regulations Applying to Deductions under Article 6

Reg. 66. Cash Discounts.—Cash discounts allowed on sales may be deducted only when the full amount of the selling price has been included in Schedule A of gross income tax returns.

Reg. 67. Freight.—Shippers receiving any amounts in repayment of freight charges which have been prepaid by them may deduct such amounts from gross income tax returns when such amounts have been included in Schedule A. Items of this nature will be treated the same for gross income tax purposes as the return of amounts advanced to another taxpayer or as loaned money. In order to claim deductions of this kind on gross income tax returns the shipper must have actually prepaid freight for the purchaser. In no case can freight charges be deducted as an expense by either the shipper or his customers, and this deduction can in no way refer to freight charges which are a cost of doing business. The purchaser can never have prepaid freight deductions, as to him freight charges are a cost of doing business and deduction therefore can in no way be taken. In all cases where deductions are made for repayment of freight charges a full statement of the facts and the nature of the transactions must accompany the return.

Reg. 68. Reimbursement of Traveling Expenses.—Whenever any employee either on a salary, commission or draw-

ing account, incurs and pays expenses for his employer incident to his employment and submits to such employers an itemized account of such expenses and is reimbursed therefor, the amount received by the employee in reimbursement may be deducted under Schedule 2 of his gross income tax returns, but must be included in Schedule A. Any other arrangement between employer and employee will not permit any deduction or elimination to be made. No employee may make a deduction where he pays expenses out of his own compensation. In no case may an employer deduct the amount of expenses incurred by employees in his own gross income tax return.

Department Regulation No. 68, approved July 1, 1934, is hereby revoked and cancelled and is superseded by this regulation which shall be in force and effect from October 1, 1935. (Approved October 1, 1935.)

Reg. 69. Taxes Collected as Agent.—Taxes collected by a taxpayer acting as an agent for either the State of Indiana [fol. 184] or the federal government may be eliminated from taxpayer's gross receipts on gross income tax returns. Taxes so collected must be reported as a part of the gross receipts shown in Schedule A of the return and deducted under Schedule 2 of the same return. The mere fact that taxes are added to the sales price of articles sold by manufacturers, wholesalers, jobbers, retailers or others and collected as a part of such sales price does not make such taxpayer a collector of the tax for the purpose of deduction of this kind, but it is only when the seller of an article is required by a state or federal tax act to collect such tax from the purchaser and pay it to the state or federal government that the tax so collected may be deducted from returns.

Only vendors may take deductions of this kind and in no way does this privilege apply to purchasers. In all cases where deductions of this kind are made a full statement of the facts and nature of the tax must accompany the return upon which the deduction is taken.

In order for taxpayers to be allowed deduction of the Indiana Gasoline Tax of four cents per gallon, as herein set out, the total number of gallons sold, upon which deduction is claimed, must be reported on Line f(1) of Schedule 2 of the return.

Federal Taxes Deductible:

Amusement (tickets)
Dues and Initiation

State Taxes Deductible:

Gasoline (4¢ gal.)
Automobile
Capital Stock
Cigarette
Compensation Tax (Import)
Electrical Energy
Federal Income
Gasoline

[fol. 185] Federal Taxes Not Deductible:

Grape Products
Malt
Matches
Oil
Processing
Soft Drinks
Tires
Tobacco
State and County Taxes
Athletic Exhibition
Liquor
Wholesale
Manufacturers
Import

State Taxes Not Deductible:

Malt or Wort
Manufacturers
Wholesale
Retail
Whiskey
All License fees

Reg. 70. **Outright Gifts.**—Outright gifts, whether received in cash or property, may be deducted from the taxpayer's gross income tax returns when such amounts have been included in Schedule A. Receipts of this nature will be sub-

ject to strict scrutiny by the department, and if it appears that there has been any consideration whatever given by a release of rights, payment of debts, past or present services or promise of future service or any other consideration whatever such receipts will be held to be taxable gross income.

Reg. 71. Pensions.—A taxpayer who receives a pension which is paid from funds that have been created partly or wholly by deductions, assessments or contributions from [fol. 186] money belonging to him will be permitted to deduct such sums from gross income tax returns to the extent of such deductions, assessments or contributions when such amounts have been included in Schedule A.

Any amount received as a pension in excess of such deductions, assessments or contributions must be reported for gross income tax. Pensions that have been created from any other source than that set out above must in their entirety be included as gross income subject to tax, except that no pensions received from the United States government or any of its departments need be included as gross income.

A taxpayer may not escape a liability for tax upon any income because any part or all of it is diverted by him or allowed to be diverted by another to a third party either as a gift, deduction or assessment, or to a fund in which such taxpayer may or may not have an interest, and any such amount diverted will be considered taxable income to the taxpayer for the period and at the time such amounts become available to him, which will be presumed to be at the time and in the period so diverted.

Each taxpayer must report and pay upon his full income, either from salaries, wages or otherwise, and no deductions for any contributions or assessments can be taken therefrom.

(a) Widows' Gratuities.—Widows receiving pensions previously paid to deceased husbands will be permitted to deduct such pensions when such amounts have been included in Schedule A. Receipts of this nature will be considered as gifts or gratuities and not as having been received on account of service or as compensation.

[fol. 187]

Article 15**Exchange**

Reg. 27. Exchange.—Any transaction involving the elements of exchange will be subject to examination and review by the department of treasury. To use the word "exchange" or any form thereof in a contract will not of itself bring the transaction within the law of exchange, except and unless such transaction falls entirely within:

Where one party gives property to another in lieu of cash it will be considered a sale and both parties to the transaction will have taxable gross receipts for the amount of the property so sold and received, and it shall be deemed to have been sold and received for an amount representing its true cash value.

Where property is sold and the proceeds or credit is used for the purpose of purchasing or procuring other property such transaction is not an exchange but a sale.

If title to goods, produce, merchandise and/or commodities of any nature is transferred and paid for by other goods, produce, merchandise and/or commodities of any nature such transaction will be considered a sale by both of the parties thereto and each will have taxable gross receipts for the full amount of the transaction.

The following transactions will be considered to come entirely within the law of exchange and only such transactions will be so considered:

(a) Where stock certificates, bonds, and/or securities are mutually exchanged for other stock certificates, bonds and/or securities, either in the same corporation or in different corporations.

Such stock certificates, bonds, and/or securities must be owned by the parties to the transaction. However, if [fol. 188] there is an additional consideration given by either party, one to the other, either in cash, or property in lieu of cash, such additional consideration will constitute taxable gross income to the party so receiving same, and the party transferring such other property will be considered as having taxable gross income for the true cash value of the property so transferred.

(b) Where two parties mutually exchange real estate, one with the other and one for the other, and no other consideration is given or received by either party to the transaction.

If, however, in the transfer of property, one for the other, there is an additional consideration given by either party thereto, either in cash or property in lieu of cash; such additional consideration will constitute taxable gross receipts to the party so receiving same, and the party transferring the property as additional consideration will have a like amount of taxable gross receipts on account of the property so transferred.

(c) Where a used article is traded in on the purchase of a new article the price allowed for such traded article will not constitute taxable gross receipts to the party so trading in such article.

This will include automobiles, furniture, washing machines, radios, etc. However, where a used article is accepted as a part of the purchase price of a new article, the seller of the new article will not include as taxable gross receipts the sale price of the used article when sold, provided the full sale price of the new article sold has been included in gross income subject to taxation at the time of sale.

Any taxpayer who fails to report taxable gross receipts, because in his opinion the transaction comes within the law [fol. 189] of exchanges and it is later held that such transaction does not fall thereunder, will be subject to penalty and interest upon such income as is omitted from his return, unless prior to the time of reporting he has submitted a full and complete explanation of such transaction to the Department of Treasury and has received a written decision exempting such transaction.

Article 16

Basis of Reporting

Reg. 73. Cash Basis.—Cash basis will be the reporting of cash or property actually received by, credited to or made available for withdrawal by a taxpayer, subject to the provisions of Reg. 130 relating to constructive receipts. All taxpayers will be presumed to be reporting on the cash basis unless permission has been obtained to report otherwise.

Reg. 74. Accrual Basis.—No taxpayer may use the accrual basis of reporting unless written application is made to the department and express permission given therefor.

Taxpayers reporting on the accrual basis will be required to include upon their returns the full sales price of any article in the period when sold whether payment is received therefor in whole or in part or if none is received at all. When returns are made on this basis no deductions can ever be taken on account of bad debts or amounts unpaid.

Reg. 75. Changes of Basis of Reporting.—No taxpayer will be granted permission to change his method of reporting on any quarterly return, but if permission to change the basis of reporting is granted, such change must be made as of the beginning of a new annual tax period.

(a) **Cash to Accrual.** In case permission to change from [fol. 190] a cash to an accrual basis is granted the taxpayer will be required to observe either of the following requirements:

(1) File an amended return for the preceding taxable year and include therein the amount by which his accounts receivable at the end of the preceding taxable year exceeds his accounts receivable at the beginning of such year; or

(2) Include the excess of his accounts receivable at the end of the preceding taxable year over the accounts receivable at the beginning of such year in his subsequent returns on the accrual basis.

In no event will the filing of an amended return for the preceding taxable year entitle the taxpayer to a refund if the amount of his accounts receivable at the end of the year is less than at the beginning.

The permission to file upon an accrual basis is one of privilege and no permission to report on this basis will be granted to enable the taxpayer to obtain relief from taxes.

(b) **Accrual to Cash.** In case permission to change from an accrual to a cash basis is granted, the taxpayer will be required to observe the following requirement:

(1) Include in his subsequent returns all gross receipts even though part of such gross receipts are collections of accounts receivable which are reflected on his books as of the beginning of the current taxable year.

Article 17

Businesses With Two or More Locations

Reg. 76. Businesses whose income is received at two or more business locations are required to file with their re-

turns, both quarterly and annually, properly executed copies of Schedule E, Form 10, allocating such incomes to [fol. 191] the locations at which such incomes were received.

Article 18

Leased Departments

Reg. 77. Where a department store leases departments to others and collects the accounts of such lessee, the department store may report on all its gross receipts together with the entire gross receipts of such lessee and pay tax thereon at the rate of 1% if sales are made at retail. However, if the lessee desires to make report of his own gross income such lessee will have to include all of the gross receipts collected by the lessor before any expenses and commissions are taken out, and the lessor will be required to furnish to the department of treasury a statement of the entire gross receipts of such lessee collected by the lessor. If the lessee desires and elects to make a return then the lessor will be required to include in his return the commissions charged the lessee.

Article 19

Partnerships

Reg. 78. Co-partnerships as such shall not be subject to any tax as a partnership, but the gross income shall be reported upon Form 3-A and such gross income shall be accounted for and reported by each member thereof in the proportion of their aliquot shares on each member's individual return, and tax shall be paid thereon. Both annual and quarterly returns must be filed showing the gross income of partnerships regardless of the amount of income of such partnerships or of the aliquot shares of each partner.

The partnership returns shall be purely information returns and must be filed by some member of the partnership. [fol. 192] However, the responsibility for filing a partnership return is imposed upon all of the partners alike. The withdrawal by any partner of his own partnership interest need not be reflected in his individual return, but if any partner receives any amount in excess of his interest and such amount is in any way compensation paid him out of the share of any other partner, such amount shall be reported

in the individual return by such partner so receiving such excess.

Article 20

Corporations

Reg. 79. Corporations are named as taxpayers under the gross income tax law and must file returns and pay tax in accordance with the rules laid down for other taxpayers.

Reg. 80. Sales by a Corporation of Its Capital Stock.—Gross receipts derived by a corporation from the sale of its original or its subsequent issue of capital stock will not constitute taxable gross income to such corporation. However, gross receipts from the sale of corporation treasury stock will constitute taxable gross receipts to the corporation and must be included on gross income tax returns for taxation.

Capital stock will be deemed to mean stock that has been authorized at the time the corporation was first formed or any increase in capital stock that is authorized subsequent to that time. This will not be deemed to refer to gross receipts from the sale of any stock purchased or acquired by the corporation after its formation (including company's own stock), and amounts received from sale of stock so purchased and acquired will be taxable gross income to the corporation and must be included in gross income tax returns for taxation.

Reg. 81. Consolidated Returns.—Under the following ruling [fol. 193] corporations qualifying there under may file consolidated returns and eliminate receipts from sales by the parent to its subsidiaries and by the subsidiaries to the parent.

The term "wholly owned subsidiary" as used in this Act shall be defined to mean a subsidiary of which 95% of the voting capital stock is held by a parent company.

An affiliated group of corporations shall, subject to these regulations, have the privilege of making a consolidated return under the gross income tax law of 1933.

An affiliated group will be one or more corporations owned through stock ownership by a parent corporation.

The right to file a consolidated return of an affiliated group shall be wholly conditioned under a parent corporation owning 95% of the voting stock of a subsidiary or

subsidiaries and one of the subsidiaries owning 95% of the voting stock of another corporation which is subsidiary to it.

A corporation will cease to be a part of an affiliated group when at any time the stock ownership owned by the members of the affiliated group becomes less than 95%.

If an election is made to file a consolidated return, but one specific exemption of \$1,000 will be allowed for the affiliated group.

If any affiliated group elects to make a consolidated return there shall not be included that portion of the gross income of such subsidiary or subsidiaries or parent company which was realized from the sale of property, materials or goods made by the parent to the subsidiary, subsidiary to subsidiary, nor of the subsidiary to the parent. A corporation will become a member of an affiliated group only when a member of the affiliated group becomes the owner of [fol. 194] at least 95% of the voting capital stock of such corporation. In making a consolidated return of an affiliated group it will be necessary to eliminate all inter-company transactions pertaining to gross income. The tax imposed upon an affiliated group will be at the rate imposed upon the gross receipts from the last transaction of a member of such affiliated group. That is, a manufacturer marketing his produce through a subsidiary where the subsidiary sells at retail will be required to report the gross receipts from the sale of the subsidiary as the gross receipts of the affiliated group and be taxed at the rate of 1% thereon.

The consolidated return period will be the taxable period of the parent corporation. The election of making consolidated returns of any affiliated group must be made at the time of making the return of the parent corporation and the subsequent returns must be made in accordance with such election unless application is made to the department of treasury and permission is granted to file returns in some other manner.

An affiliated group will not be considered to include either a parent or a subsidiary located without the State of Indiana.

Corporations filing consolidated returns will be required to use Schedule D.

Reg. 82. Holding Companies.—A corporation owning and holding title to property, which property is leased to an-

other, will be considered to have taxable gross receipts in the amount of rentals so received, which will be subject to the Indiana Gross Income Tax Act.

The holding of title to property and leasing of same is deemed to be conducting a business, and the fact that such holding company does not actively participate daily in [fol. 195] competitive trade or commerce in no way divests it of its character as a business.

Section 1 (f) of the gross income tax Act of 1933 provides in part as follows: "The term 'gross income,' except as hereinafter otherwise expressly provided, means the gross receipts of the taxpayer * * * derived from trades, businesses or commerce * * * and all receipts by reason of the investment of capital, including interest, discount, rentals, royalties, fees, commissions or other emoluments, however designated * * *." By this section rentals are designated to be taxable gross receipts and no exception thereto is found in any other section of the law.

Section 3 of the Act provides that the tax shall be imposed at the following rates: "Section 3 (f). Upon the gross income of every person engaged in any business or activity not enumerated in Sub-sections (a) to (e), inclusive, of this section, including * * * all funds received for the performance of contracts, all funds from the investment of capital, and all receipts from any source whatsoever, one per cent." The word "person" as used in Section 3 (f) is defined in Section 1 (a) as including corporations.

Since a holding company as such is not excepted under the gross income tax Act it must have been the intention of the legislature to impose a tax thereon.

A holding company will therefore be required to make report of its entire gross receipts, including rentals, which may be either paid to it direct or paid to another for its benefit.

Dissolution

Reg. 83. Taxable Receipts of a Stockholder upon Dissolution.—A stockholder receiving cash or property from a corporation either on account of a partial or complete liqui-[fol. 196] dation, or dissolution, where such stockholder is required to surrender his stock therefor, shall be deemed to have received taxable gross income for the full amount of cash or value of property so received.

The value of property received by a stockholder from a corporation will be deemed to be the same value as the assets so transferred are carried upon the books of the corporation immediately preceding the transfer to the stockholder.

If the property so received is to be given any other value than that reflected by the books of the corporation it will be necessary to establish such other value by affirmative evidence, except where the property consists of bonds or stocks of another corporation, or where the property consists of bonds, the obligations of any municipality, county or U. S. government obligations, and such stock or bonds are listed stocks or bonds, then such stock or bonds shall be considered as having a value and be a receipt to the individual of an amount represented by the market value as listed on the date of transfer.

The amount of taxable income so received in no way depends upon the number of shares of stock or upon whether it was an original or a subsequent issue or stock issued as a dividend, except that any holder of preferred stock which is called or retired and the holder thereof does not have the right of election of such retirement shall not be required to include any cash or property received for and on account of such retirement, since such preferred stock will be considered as having matured and the proceeds therefrom not taxable.

Wherever a corporation distributes either cash or property, and the only consideration is the return and re-[fol. 197]tirement of stock, it shall not be considered as having any gross receipts from such transaction subject to tax.

Reg. 84. Certificate of Clearance to Secretary of State from The Department of Treasury.—Under the gross income tax Act of 1933 the secretary of state of Indiana is required to withhold the issuance of a certificate of dissolution of any corporation organized under the laws of Indiana or any certificate of withdrawal of any corporation organized under the laws of another state and admitted to do business in Indiana until the receipt of a notice from the department of treasury to the effect that gross income tax due the State of Indiana by any such corporation has been paid or that such corporation is not liable for any tax under this Act.

Reg. 85. Affidavit; Corporation Not Operating After May 1, 1933.—Upon receipt of an affidavit from a corporation signed by a duly authorized officer of the corporation a cer-

tificate of clearance will be issued immediately. Such affidavit must show the following facts:

(a) Affidavit of Domestic Corporation—

(1) That no business has been transacted since May 1, 1933.

(2) That all assets have been disposed of prior to May 1, 1933.

(b) Affidavit of Foreign Corporation—

(1) That no business has been transacted in the State of Indiana since May 1, 1933.

(2) That all assets located in the State of Indiana have been disposed of prior to May 1, 1933.

Reg. 86. Affidavit; Corporations Operating or Selling Assets After May 1, 1933.—Corporations which have operated [fol. 198] for any period of time since the first day of May, 1933, will be required to file an affidavit with the gross income tax division, which affidavit must be filed by a duly authorized officer of the corporation and show that income tax returns for all periods have been filed, including the date on which the final dissolution papers were filed or to the date said corporation discontinued business and transferred all of its property, and that all such gross receipts, both from operation and sale of capital assets, have been reported in such returns.

(a) Audit.—A corporation having made and filed such affidavit reflecting any operation since May 1, 1933, can only be issued a certificate of clearance when all gross income tax returns so filed by it have been audited and approved by the audit section of the gross income tax division, and upon the receipt of a certificate from the auditing department to the legal department reflecting that all tax liability has been fully liquidated, a notice of clearance will then, and not until then, be issued to the secretary of state.

(b) Exemptions on Final Returns.—A dissolving corporation making a final return for any period other than a full taxable year will be entitled to take exemption at the rate of \$83.33 per month from the date of its incorporation in the taxable year to the end of such year regardless of the unexpired portion thereof, and will make such return as

though it were an annual return, and will include, together with its current gross receipts, all other receipts reported in its prior quarterly reports within said year.

Article 21

Deductions under Schedule C

Reg. 87. Deductions of Losses Under Schedule "C."—Any taxpayer who is permitted to make his gross income [fol. 199] tax return under Section 1 (g), that is, upon his gross earnings, will be required to fill out and attach Schedule "C" to his return.

In Schedule "C", line 1 (a), will be reflected the entire gross receipts from the sale of property, which has been acquired on account of businesses and activities such as are enumerated in such section.

On line 1 (b) will be reflected the cost of such property. By the cost of property is meant the amount paid for property if it is such property as is permitted to be dealt in under this section, or property that the taxpayer has been forced to acquire on account of money loaned. In the latter case no additions or improvements put upon the property after acquirement can be reflected as a part of the cost.

On line 1 (c) the gross earnings, which is the difference between the gross receipts and the cost of the property will be reflected. The amount reflected on line 1 (c), if a profit shall be added to all other income as shown on Schedule "C" and shall be shown as a part of the total on line 6. If the amount shown on line 1 (c) is a loss then this amount cannot be carried further and cannot be used to reduced the total of the other items as reflected on Schedule "C".

Reg. 88. Sale of Property.—Whenever any taxpayer, under Reg. 89, liable for gross income tax on gross earnings sells property, the title of which vests in it, such taxpayer will have gross earnings subject to tax on proceeds from such sale whenever the amount received is in excess of the cost of the property so sold. No gross earnings from property sold on conditional sales contracts will be considered to have been realized until the amount received is in excess of the [fol. 200] cost of the property except where the taxpayer periodically allocates part of the payments to interest. Then such amounts as are considered to be interest must be in-

cluded in gross earnings for the period in which they are so allocated.

However, when any such taxpayer has sold property on conditional sales contract and the purchaser cancels the contract, then the amount that has been paid in by the purchaser and which has been credited against the contract price will be considered as taxable gross earnings within the period in which the contract is cancelled, unless such amounts have been previously reported for gross income tax in periods in which they were collected on such contracts.

Article 22

Banks, Trust Companies, etc.

Reg. 89. "Gross Income" of banks, trust companies, building and loan associations, brokers, finance companies, dealers in commercial paper, and persons engaged in the business of lending money or credit and other businesses of similar nature shall be deemed to mean "gross earnings" in respect to that part of the total gross income of such persons which is derived from such business and activity, and such gross earnings will be taxable at the rate of 1%. All taxpayers named herein will be required to attach Schedule "C" to gross income tax returns as set out in Reg. No. 87.

Reg. 89a. Gross Receipts of Banks, Trust Companies, etc.—Any taxpayer who is permitted to make return of his gross income tax under Section 1 (g) or (h), that is, upon his gross earnings, or as a domestic insurance carrier, can not include any income under that class which has been realized on account of businesses and activities not so classified.

Therefore, any taxpayer classified under Section 1 (g) or [fol. 201] (h), but who has other activities or carries on a business such as operating a farm, store, office building, apartment house, and/or any other kind of business will be required to report any gross receipts from such other business in the same manner as all taxpayers engaged in such other businesses are required to report, and can not include or intermingle such other gross income with the gross earnings from the businesses so set out in Section 1 (g) or (h).

This will be true whether or not the taxpayer has been forced to acquire such business through foreclosure or to otherwise take over the property which he operates or

whether it is operated by or through a trustee. (Approved September 25, 1934.)

Reg. 90. National Banks will not be required to make gross income tax returns for gross receipts from business done strictly under their national bank charter.

Reg. 91. National Bank Stock.—Tax on sale of national bank stock and dividends—Section 5219 of the revised statutes of the United States—provides: “* * * (D) In case the dividends derived from said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital. The gross income tax Act provides that the proceeds from the sale of property either tangible or intangible, and all receipts by reason of the investment of capital shall be taxable under said Act. The shares of stock of national banks held by a taxpayer is individual property and, when sold, the proceeds arising therefrom must be included in his gross receipts for taxation since imposing this tax upon such gross receipts is not imposing a tax that is greater than that being imposed upon the proceeds of other property of like kind.

It is therefore held that the taxing of dividends and of the [fol. 202] proceeds from the sale of national bank stock is not a violation of the United States statutes concerning the taxing of the proceeds of national banks and that the proceeds received by either an individual or a corporation on account of the sale of national bank stock, or dividends received on account of the holding of such stock are taxable gross receipts under the Indiana Gross Income Tax Act and are taxable in exactly the same manner and at the same rate as proceeds from sales or receipts of dividends of other corporate stock, and must be reported by a taxpayer having income from either or both of such sources.

This ruling likewise applies even though the national bank is operated entirely outside the State of Indiana.

Insolvent Banks

Reg. 92. Receiver or Agents of Liquidating Banks will be required to report the gross earnings of the banks for which they are appointed and include therein all interest, rentals, discounts and all other gross earnings collected or realized if in excess of the exemption, regardless of the

fact that such interest or rentals or gross earnings are collected or realized upon contract made and entered into prior to their appointment.

Reg. 93. Distribution to Depositors.—Any amount distributed to a depositor not in excess of the amount of his deposit by a bank either in voluntary or forced liquidation will not constitute taxable gross income.

Reg. 94. Receivers, Conservators and Employees of Insolvent National Banks.—Receivers, conservators and employees of national banks in receivership, in liquidation or under the control of the comptroller, are not employees of, or are they paid by the United States government and such services are only occasional and temporary. It is there- [fol. 203] fore held that all compensation received by them for such services is taxable under the gross income tax law of Indiana.

Article 23

Building and Loan Associations

Reg. 95. Semiannual Returns.—Building and loan associations will be taxable under the gross income tax Act upon their gross earnings and will be required to make their reports semiannually, that it, on the closing as of June 30th and December 31st of each year, and such semiannual returns shall be made on or before July 15th and on or before January 30th. The second semiannual return will be the annual return and upon such annual return will be reflected the income of the association for the entire year and tax computed thereon at the rate of 1%. Any tax previously paid for the annual period will be credited upon the tax computed on the annual return. Schedule "C" must accompany all gross income tax returns made by any such associations.

Article 24

Mortgages

Reg. 96. When a mortgage is only security for promissory notes, the receipt of the mortgage money by the mortgagor and the return of the money to the mortgagee will not be included in gross receipts: Provided, however, When property is mortgaged for the purpose of sale and the avoid-

ance of tax, the receipt of the mortgage money by the mortgagor (or seller) will be considered as a payment on the sale price of the property so sold as though the money had been paid by the purchaser.

Reg. 97. Mortgage Bonds.—The sale of bonds is a sale of intangibles as stipulated in Section 1 (f) of the Act; [fol. 204] therefore, the proceeds from the sale thereof must be included as taxable gross income.

Reg. 98. Foreclosure.—Whenever property is sold under decree or order of court, whether by foreclosure or on an order to sell, by an administrator or receiver and the property is bid in by the mortgagee for an amount not in excess of the original mortgage, including the costs occasioned by the order of foreclosure and sale, in such cases no gross receipts will be considered to have been received by the mortgagor, administrator, receiver, trustee or guardian.

Reg. 99. Cancellation of Mortgage.—Where a mortgagor deeds his property to a mortgagee and no consideration is given for said deed other than the surrender and cancellation of the mortgage then, in that event, neither the mortgagor nor the mortgagee has any gross receipts from such transaction returnable under the gross income tax law.

Reg. 100. Sale of Mortgaged Property.—Taxpayers selling property upon which there is a mortgage lien will be deemed to be selling only an equity therein when the mortgage lien is assumed by the purchaser, and only the amount received in cash, notes or other property will be reported for gross income tax. In all such cases the lien must actually exist against the property so sold. However, when a taxpayer sells mortgaged property and uses the proceeds from such sale to satisfy the lien against it he will be considered as having taxable gross receipts in the full amount of the sale price.

Article 25

Dealers in Securities

Reg. 101. Definition.—A dealer in securities as herein used is any taxpayer, whether an individual, partnership or corporation, with an established place of business regularly engaged in buying and selling securities for

customers. Taxpayers who buy and sell or hold securities for investment or speculation irrespective of whether such buying or selling constitutes the carrying on of a trade or business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities for themselves or for the firms, are not dealers in securities within the meaning of this rule.

Reg. 102. Rate of Tax; Gross Earnings.—A taxpayer who is a dealer in securities will be considered under the provisions of Section 3 (e) " * * * any other business of a similar nature, * * *" and will be taxed upon his gross earnings at the rate of 1%. Dealers in securities must attach Schedule C to gross income tax returns. A dealer in securities having gross receipts from sources other than dealing in securities will not be permitted to report such other gross receipts on the gross earning basis.

Article 26

Stocks, Bonds and Dividends

Reg. 103. Bonds.—The sale of bonds is the sale of intangibles and must be reported for gross income taxation at the rate of 1% upon gross receipts from such sales. Amounts received upon maturity of all bonds and of certain preferred stocks will not constitute taxable gross receipts to the holder thereof. All amounts of interest received, credited, made available for withdrawal or received as a part of the sale price as premium must be included for taxation. Receipts from the sale of certain bonds are exempt as is the interest thereon, according to the table in Reg. No. 62.

Reg. 104. Stocks Sold Outright.—The full sales price of stocks sold outright must be reported by the taxpayer [fol. 206] as taxable gross income at the rate of 1%.

Reg. 105. Marginal Transactions.—Any taxpayer dealing on margin will report his gross earnings from such transactions. Gross earnings in such cases will be the profits realized, whether received or credited to his account, where stock is sold for an amount in excess of its cost, without any deduction for losses incurred when stock is sold for an amount less than cost, and also without any

deductions for taxes, brokerage commissions or other expenses incident to the transaction.

Reg. 106. Stock Received as Wages, Commissions, or Payment for Services or Sales Price of Property.—When stock or other securities is accepted by a taxpayer as bonus, wages, commissions, payment for services, or other emoluments, or for the sales price of property, the receipt thereof will constitute gross income to the taxpayer.

Gross income will be measured for taxation by the actual value of the stock or securities at the time of acceptance. By "actual value" is meant the market value of such stock or securities. If the stock or securities have no determinable market value, they will be included in taxable gross income for whatever amount they are accepted as payment.

The Department of Treasury will in all cases reserve the right to fix and determine the amount for which such stock or securities shall be included in returns for taxation.

Department Regulation No. 106, approved July 31, 1934, is hereby revoked and superseded by this revision and amendment. (Approved: October 1, 1935.)

Reg. 107. Dividends.—Dividends received upon capital stock are taxable gross income whether received by an individual stockholder or by a corporation on its holdings in another corporation.

[fol. 207] Dividends permitted to accumulate or which are applied to a stockholder's debt or credited to his account will be considered to have been received by the stockholder in the period in which such dividends were made available for withdrawal and must be reported for taxation on gross income tax returns.

(a) Stock Dividends. Dividends received in additional stock of the declaring corporation will not be subject to gross income tax.

(b) Insurance Policy Dividends. Dividends issued to policyholders are taxable gross income when received in cash, but when applied to the purchase of insurance or to the reduction of premiums to be paid they will not be considered as taxable gross income.

Article 27

Notes and Other Intangibles

Reg. 108. Face Value; Interest.—When notes are accepted in lieu of cash for the transfer of title to property, for services or for any income whatsoever they must be reported for taxation at their full face value in the period when accepted; but amounts received in payment thereof will not be taxable, except that any interest thereon must be reported for taxation in the period when received.

Reg. 109. Notes Accepted Prior to May 1, 1933.—Promissory notes (except conditional sales notes) accepted prior to the effective date of this law will not be reported for taxation when payment thereof is received after such date, except that any interest received after said effective date must be reported.

Reg. 110. Conditional Sales Notes.—Conditional sales notes will not be reported for taxation when accepted, [fol. 208] but any payments received on the principal of the notes which would constitute the sale price of the article sold, together with any interest thereon, must be included for gross income tax in the period when received, whether the sale of the article was made before May 1, 1933, or subsequent to that date.

Reg. 111. Sales of Notes.—The sale of a note, either conditional or otherwise, is a sale of an intangible as set out in Section 1 (f) of the gross income tax Act and the full sales price received therefor must be reported for taxation regardless of the fact that the face value of such note or any payment thereon might have been previously reported upon gross income tax returns in the period when received.

Reg. 112. Notes for Borrowed Money; Interest.—The receipt of borrowed money is not taxable to the borrower nor is the receipt of the repayment thereof to the lender, and notes taken in evidence of money loaned are not taxable gross receipts, except that when such notes are sold or transferred the full sales price thereof must be reported for gross income taxation at the rate of 1%. Interest on loaned money is taxable gross income and must be reported on gross income tax returns in the period when received.

Reg. 113. Sale of Collateral.—Whenever it is necessary for a lender to make sale of any collateral property, either tangible, or intangible, which has been pledged or assigned for a loan, then the entire gross receipts realized from the disposition thereof will be taxable income to the owner thereof. Whenever property is sold by or for another the gross receipts realized therefrom must be included in the return of a taxpayer as his gross receipts under the Indiana Gross Income Tax Law.

[fol. 209] Reg. 114. Tax Anticipation Warrants.—When tax anticipation warrants issued by the governing body of a municipal corporation in the state are accepted by any taxpayer for the full amount or a part of the selling price for property, for services or as any income in lieu of cash, such taxpayer accepting such warrants will be considered to have taxable gross receipts of the value of the warrants so accepted.

Proceeds from the sale or redemption of such warrants are exempt from the gross income tax, but any interest or premium received thereon will be taxable income to the holder and must be included on gross income tax returns for taxation.

Reg. 115. Other Intangibles.—Gross receipts from the sale of intangible property are taxable at the rate of 1%. The term intangible property includes notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts; bills of sale, conditional sales contracts, chattel mortgages, real estate mortgages, written contracts for the payment of money, certificates or other instruments evidencing an interest in property or rights, final judgments certificates of sale and any and all other intangibles capable of being transferred, acquired or sold. The situs of the intangibles shall have no bearing upon the taxability of the receipts for the sale or transfer thereof.

Article 28

Livestock Dealers and Farmers

Reg. 116. Dealers; Stockyards.—A taxpayer dealing in livestock within the confines of a stockyard under the federal jurisdiction will be considered under the provisions of Sec.

[fol. 210] tion 3(e) " * * * any other business of a similar nature * * *—“ * * * engaged in the business of lending money or credit * * * ” (Section 1 (g) and will be taxed upon his gross earnings at 1%.

Reg. 117. Commission Buyers.—Any taxpayer engaged as a buyer of livestock for others and who is operating with other than his own capital and who is paid a commission will be required to report only his gross commissions for taxation at the rate of 1%.

Reg. 118. Sales of Livestock.—Farmers selling to commission firms or others will be required to include for gross income taxation at the rate of $\frac{1}{4}$ of 1% the entire sales price of livestock sold, and such gross receipts may not be reduced on account of any yardage, or sales commissions, insurance, feeding charges, trucking charges or any other expenses paid incident to the sale.

Reg. 119. Rate of Tax.—Sales of livestock will be regarded as wholesale sales and the rate of $\frac{1}{4}$ of 1% shall apply to the entire sales price thereof.

Reg. 120. Rates of Taxation on Farm Receipts.—A taxpayer engaged in the business of agriculture, including the production of livestock, poultry, eggs or any other product of the farm, orchard, garden or greenhouse shall reflect in his gross income tax return his gross receipts from the sale of such products, on which he will be taxed at the rate of $\frac{1}{4}$ of 1% : Provided, however, the agriculturist who deals in or produces any such farm products and sells same to a consumer will be deemed to be selling at retail and will be taxed at the rate of 1%, as will also receipts from sales of equipment or chattel property. (See Reg. 49.)

Reg. 121. Gasoline Tax Refunds.—Any taxpayer receiving refund of gasoline tax will not be required to include the [fol. 211] amount of such refunds in his report of gross income.

Reg. 122. Exchange of Farm Products.—Farmers exchanging farm products for merchandise will be deemed to have sold such products and will be required to include the value of the merchandise received for products so exchanged in his gross income tax return . (See Reg. 72.)

Article 29

Salaries and Wages

Reg. 123. Rate of Taxation.—All salaries and wages, except those paid federal employees, are taxable under the gross income tax Act at the rate of 1%.

Reg. 124. Public Officials.—Salaries of any state, county or municipal officer or employee in whatsoever capacity employed are taxable under this Act at the rate of 1%.

Reg. 125. Official Expenses.—(See Reg. 68.)

State employees having mileage and traveling expenses paid by the state may deduct amounts received in reimbursement therefor in their gross income tax returns.

County officials may deduct from gross income only such amounts as are received by them as repayment of expenditures made for the county which will not include any amounts paid to deputies by such officer, but any and all moneys received for payment of personal expenses or their personal compensation must be reported for taxation.

Amounts received by county sheriffs in repayment for mileage in transporting persons to state institutions or for other county expenses wherein they are required to file a bill for the same will not be considered taxable gross income, but any amounts received by such sheriffs as per diem in attendance in any court must be reported for taxation.

Reg. 125a. Reimbursement of County Sheriffs for Feeding [fol. 212] Prisoners.—Volume 10, Burns Revised Statutes, Supplement of 1935, Chapter 13, Sections 49-1323 to 49-1326, provides for the feeding of prisoners by the County Sheriff and fixing allowances therefor. Under the revised Act the Sheriff of every County in this State having a population of less than 200,000 will be allowed the sum of not to exceed 20¢ per meal for each person in his charge, the Sheriff of each and every county in the State having a population of 200,000 or more will be allowed a sum not to exceed 13½¢ per meal. The exact amount which the Sheriff is allowed in each case is fixed by the State Examiner of the State Board of Accounts, on and before the 15th day of June of each year. The amount so fixed shall apply to the year beginning on the 1st day of July next succeeding.

It is further provided that the Sheriff shall submit to the Board of County Commissioners an itemized statement un-

der oath showing the names of the prisoners and the date that each was in prison and the number of meals served to each such prisoner. The County Commissioners are authorized to allow the Sheriff's claim and the County Auditor is authorized to draw his warrant upon any appropriation therefor as for other county expenses.

It therefore appears that any amounts received by Sheriffs for the feeding of prisoners which do not exceed the amounts expended by them for such purpose is merely reimbursement of county expenses incurred and may be eliminated in the Sheriff's individual return. However, any difference between actual expenditures for such purpose and the amount received from the county must be included for taxation.

This ruling shall be effective from October 1, 1935, and subsequent returns, examinations and assessments shall be made in accordance herewith. (Approved October 31, 1935.)

[fol. 213] Reg. 126. Bonuses.—Bonuses will be considered additional compensation for services rendered and will be taxable to the recipient in the period in which they are received or made available for withdrawal.

Reg. 127. Deductions for Pensions or Retirement Funds.—When deductions are taken from salaries or wages for the establishment of pension or retirement funds, or any fund in which the employee may have a future interest, the employee must report for gross income taxation the full amount of such salary, wages or bonuses without any reduction whatsoever. (See Reg. 71.)

Reg. 128. Tips, Marriage Fees, Mass Fees, Baptismal Offerings received by persons for services rendered incident to their employment are taxable income to the recipient at the rate of 1%.

Reg. 129. Gambling.—Money received on account of wager or game of chance will be considered gross income and must be reported for taxation without any reduction on account of losses incurred.

Article 30

Income Not Reduced to Possession

Reg. 130. Constructive Receipts.—Interest coupons, dividends, interest on savings accounts and bank deposits, com-

missions and salaries for services or items of income from any source whatsoever maturing to the credit of or becoming due a taxpayer but not actually reduced to possession, but which has matured, become due or has been unconditionally credited to the account of, or set apart for, any taxpayer, and which may be withdrawn by him at his own election at any time, will be subject to gross income tax for the period in which such amounts are so credited, set apart or become available for withdrawal. Amounts earned [fol. 214] by or becoming due from any source to any taxpayer which are credited to his debit account for a reduction thereof shall be considered as having been actually received by such taxpayer within the period so credited. Any substantial limitations or conditions of withdrawal of any amount will defer the tax liability upon the same until the time that such limitations or conditions are removed or satisfied. If, however, items matured or credited to a taxpayer's account are not available for withdrawal for the reason that there are no funds out of which to make payment they will not be taxable until such a time as the funds are available to the taxpayer.

Reg. 131. Income Paid to Third Party.—Whenever a party has a right to receive income which would be taxable to him when received he cannot escape taxability on account of such money being paid to another for his benefit.

Example: A leases property to B for a stipulated rental. A becomes indebted to C for a sum of money which he directed B to liquidate by paying to C the rental money due A. A would be taxable on the entire amount of rent received from B direct, together with the amount of money B paid to C for A's benefit.

Reg. 132. Board and Maintenance; Living Expenses.—Where living expenses are furnished an employee by his employer as a part of agreed compensation to employee, and a stated and agreed value is placed upon such living expenses and are accepted by the employee in lieu of additional compensation, such living expenses, shall be included by employee as taxable gross income at the stated and agreed value thereof, and if no stated value is set then such living expenses furnished the employee must be included and reported by him for gross income taxation at a fair cash value thereof, together with his taxable gross receipts from [fol. 215] other sources.

Article 31

Joint Interest in Income

Reg. 133. Joint Returns.—Joint returns by husband and wife are not provided for in the Act and each will be required to report and pay tax upon the income rightfully received or credited to them, and each shall be entitled to their individual exemption. No division or separation of their incomes for the purpose of reduction of the same will be permitted.

Reg. 134. Income from Estates by Entirety.—The gross receipts from the sale or rental of real or personal property, tangible or intangible, or interest, dividends or any return on the investment of an estate held by entireties by a husband and wife, the title to which was vested in them during their marriage and which cannot be disposed of by either without the joinder of the other, may be reported by the husband and wife in their individual capacity, each reporting one-half of the proceeds and each being entitled to an exemption of \$1,000 for any taxable year.

Reg. 135. Joint Tenancy.—Gross receipts of rentals, other earnings or from sale of property owned in joint tenancy will be reported for gross income taxation in their individual returns by each of the joint tenants in the proportion of their respective shares.

Article 32

Landlord and Tenant

Reg. 136. Rentals.—All rentals will be considered as gross income of every person engaged in any business or activity not enumerated in sub-sections (a) to (e) “* * * [fol. 216] and all receipts from any source whatsoever * * *” and must be included for gross income taxation at 1%. Rentals received from a state or federal government or from departments or subdivisions of either are not exempt from gross income tax and must be included for taxation.

Reg. 137. Crop Shares.—When land is farmed by a tenant on the “grain rental” plan the landlord’s proceeds from the sale of his share will be taxable to him at the same rate

and under the same provisions as apply to agriculturists, whether the crop is sold by himself or by his tenant.

The receipt by the landlord of his share of the harvested crop is not taxable to him, but any sale made by him of such farm product is taxable under requirements set out in Reg. 120.

Provided, however, That when land is rented for cash the rental received will be taxable at 1% whether received in cash or crops in lieu thereof.

Reg. 138. Utility Charge Deductions.—That part of utility charge which is included in the rental consideration is gross receipts subject to taxation. However, if the utility consumption of the renter is greater than the maximum consumption allowed in the rental contract, and the owner, as a matter of convenience, merely collects for the utility, the amount of the charge in excess of maximum allowed in the rental contract will be a non-taxable receipt.

Article 33

Municipal Utilities

Reg. 139. The gross receipts derived from the operation of a utility, which utility is operated as a department of a municipality, must be included for taxation under the gross income tax law.

[fol. 217] The gross receipts for services or facilities rendered other departments of the city by such utility department will not be considered as gross receipts of the utility for taxation under the gross income tax law.

The entire gross receipts of a utility corporation which has been organized as a municipal corporation, the common stock of which is held by the municipality, will be included for gross income tax purposes in the return of the municipal utility corporation.

Such gross receipts will include all amounts, received from the operation of the utility, all amounts received from the sale of its services or facilities to the city or any departments thereof, all amounts received as rental from the leasing of its services or facilities and all amounts paid to a third party to be applied on or as a reduction of bonded indebtedness or other obligations of such municipal corporation.

Article 34

Transportation and Communication

Reg. 140. The gross receipts derived by railroads, interurbans, pipe line, bus and truck lines from carrying charges of passengers, including Pullman service on sleeping and dining cars, freight and telephone or telegraph messages originating in the State of Indiana, the destination of which is outside of the State of Indiana on a continuous conveyance or which originated outside the State of Indiana and terminated therein, will not be included in gross income tax returns.

Article 35

Grain Dealers

Reg. 141. Track Buyers; Commission men; Warehousemen [fol. 218]—A taxpayer dealing in grain as a track buyer (buying on track or to arrive), a commission man or warehouseman will be considered under the provision of Section 3 (e) “* * * any other business of a similar nature * * *” (in the business of lending credit, Section 1 (g) and will be taxed upon his gross earnings at 1%.

Article 36

Exempt Organizations

Reg. 142. Certain corporations, companies, associations, orders, leagues and societies may be exempt from gross income tax, depending upon their organization structure and disposition made of their income as set out in Section 7 (b) of the gross income tax Act.

Reg. 143. Insurance Companies.—Insurance companies who pay the State of Indiana a tax of more than 1% upon premiums levied under the provisions of the laws of this state will not be required to pay gross income tax. (Law, Section 7 (a).)

Reg. 144. Application for Exemption.—Every company or organization that believes itself to be exempt under this law will be required to file with the Department of Treasury a full statement of facts under oath, setting out its articles of incorporation and a full statement of activities and

disposition of its income, such application being subject to review by the Department of Treasury, and if it is found that such organization should be exempted, a certificate of exemption will be issued showing exemption granted. However, no organization will be presumed to be exempted from gross income tax until this regulation has been complied with.

(a) Insurance Companies qualified under the provisions of Section 7 (a) will be deemed to be automatically exempt and no showing of exempt qualifications need be made to [fol. 219] the department. Such insurance companies are not, however exempt from making and filing information returns as provided in Reg. No. 166.

Article 37

Fiduciaries

Reg. 145. Estates and Trusts.—Estates and trusts are designated as taxpayers under the gross income tax Act of 1933 and such tax shall apply to the gross income of a trust or estate derived from earnings on the corpus, from sales of property, or other income received from any and all sources (except exempt income).

Reg. 146. Administrators and Executors.—The liability for filing gross income tax returns and paying the tax due on a decedent's estate is strictly imposed upon administrators, executors or other persons having charge of the settlement of an estate, and the provisions and requirements concerning the filing of gross income tax returns and paying tax thereon that apply to individuals or other taxpayers shall apply to such administrators, executors or persons, except that all returns must be filed on the basis of a calendar year, no permission being granted for filing on a fiscal year basis. The period for filing such returns shall begin with the date of the decedent's death and not the date of appointment of the administrator or executor. The fact that all or a part of the heirs or beneficiaries are non-residents of the State of Indiana, or that all or any part of the estate is willed to or held for an organization or institution that is exempt from gross income tax, will not relieve fiduciaries from reporting and paying tax upon the gross receipts from the sale of or earnings on any such part of the estate.

Reg. 147. Exemptions.—The same exemption allowed an [fol. 220] individual taxpayer may be taken by an administrator, executor, trustee, commissioner, guardian or other fiduciary upon the gross income tax return for the estate or trust, subject to the same limitations and provisions for fractional parts of the year as set out for individuals, and exemption will be taken upon the return only in proportion to the time computed from the date of the death of the decedent to the end of the taxable year. When a fiduciary files final report to the court before the expiration of the taxable year, if he should find that gross income tax is due, a final gross income tax return must be filed and tax paid. Such return will be as an annual return subject to the requirements for individual or other taxpayers and exemption may be taken at the rate of \$83.33 per month from the date of the decedent's death in the taxable year to the end of such year regardless of the unexpired portion thereof. Any tax previously paid in such taxable year will be credited.

Reg. 148. Sale of Property to Pay Debts.—Whenever an administrator or executor sells property under decree or order of court for the purpose of making assets to pay debts of the estate, no gross receipts will be considered to have been received by such administrator or executor to the extent of the amount actually used for paying such debts, and only the unused residue of the sales price will be subject to gross income tax. However, this shall not be construed to mean that debts of the estate may be deducted when sufficient funds are available to pay such debts without sale of property to make assets for such purpose. No costs or expenses incident to the administration or management of an estate may be deducted by the administrator or executor in the gross income tax return for the estate.

Reg. 148a. Debts of Decedent Deductible on Estate Re-[fol. 221] turns.—(a) When property of an estate is sold to make assets to pay debts Gross Income Tax will not attach to the amount of the sale price used to pay the following:

(A)

1. All debts incurred by the decedent during his lifetime.

2. Funeral Expenses.
3. Medical expenses.
4. Property taxes only if the property value was fixed and assessed on the property of the decedent before the date of death.
5. Federal estate taxes.

The following are not deductible :

(B)

1. Inheritances taxes.
2. Property taxes where the value is fixed after date of the decedent's death.
3. Administrator's fees.
4. Attorney's fees.
5. Court costs.
6. All other obligations incurred in the management or operation of the estate.

When sufficient funds are available to pay such debts scheduled in "A" without sale of property to make assets for such purpose no deduction may be taken. Unless property is sold for the purpose of making assets to pay debts listed under "A" Gross Income Tax will attach to the full sales price received. In any event that part of the sales price of property not used for paying debts under "A" will be taxable. Administrators and executors are always required to pay tax on the sales price of property sold to make assets for distribution. (Approved September 22, 1934.)

Reg. 149. Decedent's Unreported Income.—Within a reasonable time after a decedent's death, the administrator, [fol. 222] executor or person having charge of the settlements of his estate will be required to file gross income tax returns for such decedent if the same would be required of such decedent had he lived. If the decedent were required to file an annual gross income tax return for an expired taxable year and failed to do so, such administrator, executor or person shall file the same for him and shall include upon such return all income received by or credited to him during the said past taxable year. Executors, administrators and persons having charge of a decedent's estate will also be required to make gross income tax returns for such de-

cedent covering the expired portion of the current year in which his death occurred and include thereon all of decedent's income received by him in the expired portion of the current taxable year and all deferred income which would have been received by such decedent had he lived, and all his unpaid accounts receivable at their inventoried value, regardless of the fact that such decedent may have been reporting on the cash basis. This shall not be construed as a requirement for a change of basis of reporting, but is required for the reason that such return will be a final return. Such current return shall be as an annual return and shall date from the first day of the current taxable year to the date of the decedent's death and may be filed at any time in the current taxable year prior to the expiration thereof, or if the administrator or executor is filing his final report to the court at the end of the optional six months' period (Acts of 1931) such decedent's return must be filed on or before such time as a final report is made. Exemptions may be taken upon the return at the rate of \$83.33 per month from the date of the beginning of the decedent's residence in the state in the taxable year to the end of such year regardless of the unexpired portion thereof and any tax formerly paid by the decedent on quarterly returns in such taxable year will be credited.

[fol. 223] Reg. 150. Trusts.—Trustees must make gross income tax returns and pay gross income tax upon all gross income derived from earnings on the corpus of the trust, from sales of property, and all other income from any and all sources (except exempt income) whether such trusts are created by will, declaration of trust or implication of law, and the same provisions and requirements concerning the filing of gross income tax returns and paying tax thereon that apply to individual or other taxpayers shall apply to such trustees. Trustees shall file only one return for a trust without regard to the number of beneficiaries and only one exemption thereon may be taken.

Reg. 151. Commissioners.—Commissioners appointed by courts for the purpose of making sale of property in partition proceedings will be required to make gross income tax returns and pay tax upon the entire gross receipts from sales of property so sold by them, and no deduction of any expenses incident to the proceedings may be taken.

Returns shall be filed and tax paid in the same manner and upon the same basis as an individual or other taxpayer.

Reg. 152. Guardians.—Guardians will be required to make gross income tax returns and pay tax upon amounts received, including earnings on or from sales of property held in trust, under the same regulations applying to other fiduciaries.

Reg. 153. Distributees.—When gross income tax has been paid by an administrator, executor, trustee, commissioner, guardian or other fiduciary, upon amounts to be distributed to heirs of decedents' estates, trustors or beneficiaries of trusts, wards of guardians and parties to partition suits, such amounts will not be deemed to be taxable gross receipts [fol. 224] to such heirs, trustors, beneficiaries, wards and parties when received by them. Heirs or beneficiaries of decedents' estates, trustors or beneficiaries of trusts, wards of guardians and parties to partition suits who are residents of Indiana will be required to report for gross income taxation all gross receipts of distributive shares received from non-resident trusts or estates when such receipts are proceeds from earnings on or from sale of property, if gross income tax has not been paid thereon by the fiduciary for such non-resident estates or trusts. However, property received from a non-resident estate in the same form as left by the decedent will not be considered taxable gross income to such resident beneficiary or heir.

Reg. 154. Inventoried Corpus.—The inventoried corpus of an estate or trust passing into the hands of the fiduciary upon his appointment will not be considered gross income to such fiduciary and will be excluded from his returns. Unpaid accounts receivable or other deferred income which would have been received by the decedent had he lived, or which would become a part of the inventoried corpus of a decedent's estate, must be reported upon the decedent's return as set out in Reg. No. 149, but the subsequent receipt of or payment of the same will not be considered taxable gross income to the administrator or executor.

Reg. 155. Inheritances.—Receipts by heirs or beneficiaries of cash, or property in the same form as left by a decedent, title of which passes by descent with or without appointment of executor or administrator, will not be

considered taxable income to such heir or beneficiary, but the gross income received from the subsequent sale thereof will be taxable.

Reg. 156. When No Returns are Required.—Gross in-[fol. 225] come tax returns for estates, trusts and decedents will not be required when the gross income of such estate, trust or decedent in any taxable period hereinbefore designated does not exceed the exemption granted to taxpayers.

Reg. 157. Certified Copy of Letters; Examination of Return.—All fiduciaries herein will be required to submit to the gross income tax division, department of treasury, certified copies of their letters of appointment before they will be permitted to examine or obtain information concerning gross income tax returns of decedents, heirs, wards, trustors, beneficiaries or other parties for whom they are acting.

Reg. 158. Returns for a decedent for past taxable year should be filed promptly after the death of decedent in order that any refund which might be due the decedent on account of overpayment of tax on prior quarterly returns may be received by the administrator or executor and be credited to the estate.

Receivers and Trustees

Reg. 159. Receivers and Trustees.—Receivers and trustees appointed by courts will not be required to make gross income tax returns of the proceeds from the sale of assets sold in liquidation. However, receivers and trustees will be required to make returns and pay tax on gross receipts derived from sales of products or property purchased for the purpose of making sale thereof and on gross receipts from operations of the business as a going concern.

Reg. 160. Exemption on Final Return.—Receivers making final returns for any period other than a full taxable year will be entitled to make an exemption at the rate of \$83.33 per month beginning with the date of their appointment in the taxable year to the end of such year regardless of the unexpired portion thereof, and the receiver in mak-[fol. 226] ing the final return will make such return as though it were an annual return and will include, together with the current gross receipts, all other receipts reported in the prior quarterly reports within said year.

Reg. 161. Distribution.—All persons, firms or corporations receiving a distribution from receivers or trustees will be required to include such receipts in their gross income tax returns unless such receipts constitute a return of borrowed money.

Reg. 162. "Bankrupt Sales."—The gross receipts from sales made by any person, firm or corporation purporting to be a bankrupt sale (not by a trustee in bankruptcy) will be taxed in their entirety under the gross income tax law.

Reg. 163. Requiring Receivers, Trustees and Assignees to Make Returns for Corporations.—Receivers, trustees in dissolution, trustees in bankruptcy and assignees assuming control of the property or business of a corporation must make returns for gross income tax for such corporations on corporation forms if such gross receipts are in excess of the exemption allowed by law. The fact that the powers and duties of the corporation are suspended and temporarily in the hands of receivers, trustees, or assignees will not remove responsibility for making returns for gross income, and such receivers, trustees and assignees, subject to order of court, shall be deemed to stand in the place and stead of the corporation officers and will be required to perform all the duties and assume all the liabilities which would be imposed upon the officers of the corporation were they still acting as such.

A receiver, trustee or assignee will be required to make a gross income tax return of receipts from operation of the corporation for which he is appointed, for the taxable period [fol. 227] subsequent to his appointment and include in such return the gross receipts from any unreported period of the corporation, and such receiver, trustee or assignee, if in control of such corporation at the end of the taxable year, shall make an annual return, and if the period that such receiver, trustee or assignee is in control of such corporation is less than one year then such return shall include the entire gross receipts of the corporation for the entire taxable year.

The fact that receivers, trustees or assignees are relieved from making gross income tax returns for receipts from the sale of assets under the rulings of this department will not affect the requirements of filing gross income tax returns in cases herein provided for.

Article 38

Secrecy of Returns—Power of Attorney

Reg. 164. Secrecy of Returns.—Section 21 of the gross income tax Act provides that the department of treasury shall not divulge the gross income or the amount of tax paid or any other information reflected or disclosed in any taxpayer's return. Taxpayers may examine their own returns at the department of treasury, but no taxpayer's return will be shown nor will any information reflected thereon be revealed to any other person unless a fully executed power of attorney is presented to the department.

While examination may be obtained by a judicial order, yet such release of information concerning any tax return will be confined to an action in which the taxpayer himself is involved relating to the matter of his own gross income tax. The taxpayer is protected further against divulging of information by heavy penalties which may be imposed upon [fol. 228] the department's employees for so doing.

Warrant claim for refund (Form 110-L) will not show the total amount of tax paid by the taxpayer, but only the amount of refund made.

Reg. 165. Power of Attorney.—Since Section 21 of the gross income tax law prohibits the divulging of any information by an employee of the department of treasury, disclosed by reports filed under the provisions of this Act, no conferences concerning any particular return may be had except with a taxpayer or with attorneys or agents duly authorized to represent the taxpayer before the department.

All Persons Appearing as Attorneys or Agents to Represent Taxpayers Must First Have Filed a Power of Attorney

No attorney or agent representing taxpayers, either individual or corporate, shall be recognized as having any right to any information contained in any return or the findings of the department thereon, or be informed of the proceedings, or pending claims or other matters unless said attorney or agent representing the taxpayer shall have first filed a power of attorney, in proper form, authorizing him to appear before the department of treasury for the State of Indiana to represent the taxpayer and specifically directed

to inquire into and receive information concerning the tax reports so filed by such taxpayer.

If any agent or attorney appears before the department of treasury of the State of Indiana and shows for good cause that he has not had sufficient time or had not been informed of the rules concerning the filing of a power of attorney, but has in his possession certain facts pertaining to the report of his client, he may be permitted to present such arguments and evidence upon the understanding that a power of attorney will immediately be filed, and unless [fol. 229] such power of attorney is immediately filed the matters presented by the attorney or agent will not be considered in the case.

No power of attorney will be accepted unless it is in regular form and only one power of attorney shall be in effect in any case for any designated period whether it be for a quarterly period or periods or for a taxable year or years.

A power of attorney may recite and specify several persons as attorney or agent, but no other power of attorney will be accepted as having been filed, except and unless all previous powers of attorneys for the same period are revoked. It will be necessary that all powers of attorney recite fully the powers being granted to the agent or attorney, and while it is not necessary that it be in strictly legal form it must be either acknowledged before a notary public (not sworn to) or the signature thereto witnessed by two disinterested individuals.

The power of attorney will only be recognized and limited to such acts as are set out and specified therein. If an agent is to have the right of substitution or revocation, such right must be specifically given in the power of attorney.

If a power of attorney is executed by an individual to his agent or attorney it must be signed by him individually. In a case where a power of attorney is given by a partnership it must be executed in the name of the partnership by at least one member of the partnership. In case the power of attorney is given by a corporation it must be signed by the president of the corporation as such, attested by the name of the secretary and the corporate seal of the corporation and acknowledged or attested before a notary public by the president and secretary of such corporation. Any [fol. 230] officer other than the president having authority to bind the corporation may sign in place and instead of the president.

If a taxpayer is insolvent, deceased or dissolved, then powers of attorney may be accepted from any person who has been appointed by the court to take charge of the property or the business of said deceased, insolvent or dissolved taxpayer; however, such power of attorney must be accompanied by a certified copy of the appointment thereof. Any officer of a corporation may appear before the department of treasury concerning the corporate returns thereof without being required to file a power of attorney so to do.

No taxpayer will be permitted to file substitutes of powers of attorney except on the written consent of the attorney or agent of record, except that the period for which the power of attorney had been previously granted has expired then said taxpayer will be permitted to issue powers of attorney to other agents or attorneys for any subsequent period without the written consent of the former agent or attorney.

The department of treasury will cancel powers of attorney after, if according to agreements, the agent or attorney of record fails within a reasonable time to furnish evidence or data pertaining to the matters in controversy which such attorney agreed to furnish.

Article 39

Information Returns of Payments Made

Reg. 166. Information at Source.—Section 25 provides that the department of treasury shall promulgate rules and regulations not inconsistent with the Act for making returns and for ascertainment, assessment and collection thereof as it may deem necessary and desirable, and shall prescribe and provide all necessary and proper forms for the [fol. 231] enforcement thereof.

Section 26 authorizes the department of treasury to examine any books, records or other data which may have a bearing upon any return or for the purpose of making a return where none has been made, and may require, by summons, any person to appear as a witness and produce such books, papers, records or data of which he may have possession. Therefore, in order that any person having in charge books, papers, records or data relating to any return may not be occasioned any unnecessary inconvenience or hardships by being required to appear before the department of treasury in a great number of cases, it is being

provided that a return of information be made to the department of treasury.

Information Returns. All persons, firms, copartnerships estates, trusts, associations, corporations or any department of government of the State of Indiana, including towns, cities, townships, counties, school towns, school cities, school boards or municipal utility corporations, making payments of \$1000 or more to any person within the period from January 1st to December 31st, inclusive, shall render a return thereof to the Director of the Gross Income Tax Division, Department of Treasury, 141 South Meridian St., Indianapolis, Indiana, on or before February 15th.

The return shall be made on Form No. 12 and supplemented by Form No. 11-A which shall be verified before an official authorized to administer oaths.

An information return will be due if the total amount paid to any one person exceeds \$1,000 even though it may be made up of several items such as wages, salaries, commissions, bonuses, rents, royalties, or other emoluments, and if the amount paid on account of dividends and/or interest shall exceed the sum of \$100.

[fol. 232] An information return is required to be made when interest and dividends are paid in excess of \$100, even though no salary, wages, or other emoluments of any kind are paid to the same persons.

An amount retained by an employer and paid to a pension fund or to another for the benefit of such employee is to be included in such information return as though such sum had actually been paid to such employee, as such sums must be reported by the individual for the period in which such sums would have been paid to him if same had not been retained and paid to someone else for his benefit.

Where an amount is paid to some individual, but where in fact it is for the benefit of several individuals, the person by whom the payment is made is required to make a return of such payment upon an information return, and the person so receiving such payment must in turn make report of any distribution made by him by filing information returns before any credit may be received therefor.

Returns will not be required on account of the following payments: 1

1. Interest on obligations of the United States.
2. Payments by brokers to customers.

3. Payments of any kind made to a corporation.
4. Payment of bills for merchandise, freight storage, professional services, repayment of borrowed money, and other similar charges.
5. Payment of rent when made to a real estate agent. (The real estate agent, however, must make report of the amount that has been collected for the benefit of each owner or owners, regardless of whether the amount collected has been paid to such owner or owners.)
- [fol. 233] 6. Payments made by the United States government to any person for any purpose whatever.
7. Partnerships need not report payments of any distribution of partnership interest to partners but must report salaries or contractual payments made to the partners and others.
8. Payments by Building and Loan Associations to stockholders as withdrawals, but dividends and interest payments must be reported.

In case a resident taxpayer receives any payment for which an information return would be required, if he was being paid by an employer within the State of Indiana, such taxpayer will be expected to have an information return filed by such employer even though such employer is located without the State of Indiana before final approval can be given to the amounts so reported by him as to salaries, wages, dividends, royalties, etc.

In a case where it is found to be impossible to file the information return within the time prescribed an extension will be granted until the 15th day of the next succeeding month after the return is due. The request for extension must be in writing and filed with the director of the gross income tax department on or before the last date prescribed for filing a return.

Article 40

Forms to be Used by Taxpayers Under the Gross Income Tax Act

Reg. 167. Forms and Schedule.—The following forms will be used by taxpayers in reporting gross income and information required by the department in relation thereto.

[fol. 234] These forms may be obtained from the Gross Income Tax Division, 141 South Meridian St., Indianapolis, from automobile license bureaus and other points of distribution.

- Form No. 1. Partnership (quarterly) No. 1-a (Annual).
- Form No. 2. Corporation (quarterly) No. 2-a (Annual).
- Form No. 3. Partnership (quarterly) No. 2-a (Annual).
- Form No. 8. Corporation Consolidated Return.
- Form No. 9. Insurance Company (quarterly) No. 9-a (Annual).
- Form No. 5. Instruction Sheet.
- Form No. 7. Schedule "C".
- Form No. 10. Allocation of Receipts from Multiple Business Locations.
- Form No. 12. Information Returns of Payments to Employees.
- Form No. 11-A. Summary of Payments to Employees.
- Form No. 100-L. Application for Fiscal Year Basis.
- Form No. 101-L. Application for Exemption.
- Form No. 105-L. Affidavit for Domestic Corporation for Dissolution.
- Form No. 106-L. Affidavit for Foreign Corporation for Withdrawal.
- Form No. 114-L. Affidavit for Corporations Not Active after May 1, 1933, for Dissolution or Withdrawal.
- Form No. 112-L. Power of Attorney (Individual).
- Form No. 113-L. Power of Attorney (Corporation).
- Form No. 111-L. Statement of Claim for Refund.

All forms for report of gross income for taxation (numbers 1 to 9-A, inclusive) are accompanied by instruction sheet (Form No. 5) containing information as to filling out and filing returns and bearing on the general application of the gross income tax Act.

Article 41

Passing the Tax on

Reg. 168. Since taxpayers are not made the agents of the state to collect gross income tax, any tax added and collected by a taxpayer must be considered as an additional price received, and will be part of the gross receipts of a taxpayer, and must be reported as taxable income.

Since the gross income tax Act is silent upon the matter of adding this tax to the selling price or charges, the adding

of such tax to such selling price or charges must be entirely a matter of contractual agreement between the buyer and the seller, and the department will therefore neither authorize the adding of the tax nor condemn the failure so to do, and only look to the taxpayer for the tax upon his gross receipts.

Article 42

Miscellaneous Occupations and Income

Reg. 169. Advertising.—Gross receipts from advertising such as display or bulletins, posters, commercial signs and radio advertising will be considered under the same classification as receipts from advertising by newspapers, periodicals and magazines, and such gross receipts will be reported for gross income taxation at the rate of one-fourth of 1%.

Reg. 170. Alimony.—Any money or property received as alimony other than property settlements will be considered [fol. 236] taxable gross income, except that any amount awarded for care of children will not be taxable. Amounts received in property settlements in which the recipient has an existing interest will be considered non-taxable income to the extent of such interest, but any excess of such interest must be included on gross income tax returns for taxation.

Reg. 171. Book Binders.—Book binders will be considered in the same classification as job printers and the gross receipts from sales to the consumer must be included for taxation at the rate of 1% and receipts from sales to others for resale at one-fourth of 1%.

Reg. 172. Barber and Beauty Shops.—Receipts from business of this nature will be classified as personal service and taxable at the rate of 1% upon all receipts from charges for tonsorial work and sales of supplies. All owners and operators of beauty or barber shops will be required to report the entire gross receipts of their shops for taxation without any deduction on account of commissions paid or expenses incurred.

Reg. 173. Consignment Dealers.—Consignees selling any property handled on consignment will be required to report and pay tax upon the entire proceeds from the sale

of such property the rate to be governed as set out in Reg. 21.

Reg. 174. Contractors.—The original contractor shall be required to report the entire amount received by him upon his contract and extras, whether the same is performed by himself or sub-let to another in whole or in part, and will be taxable thereon at the rate of 1%. When a contract or any part of a contract, is sub-let, the sub-contractor shall be required to include the entire amount received by him for the performance of his sub-contract and shall be [fol. 237] taxable thereon at the rate of one-fourth of 1%.

(a). **Contracts with State or Federal Government.** Money received for the performance of contracts with a state or the federal government, or any department, or subdivision of either, is not exempt under the gross income tax Act and must be reported for taxation.

Reg. 175. Damages.—Money received in settlement of property damage will not be taxable to the extent of the amounts used for replacement but any amounts not so used must be reported as taxable gross income for taxation at the rate of 1%.

The entire amount of personal damages or awards either on suit or by compromise or voluntary settlement will be considered taxable gross income and must be included for taxation at the rate of 1%.

Reg. 176. Dry-Cleaners and Laundries.—Laundries and dry-cleaners will be required to pay a tax upon their gross receipts at the rate of 1% except that when a laundry or dry-cleaner performs such service for other laundries or dry-cleaners or performs services for guests of hotels when the hotel is not acting as the agent for such dry-cleaner or laundry, the rate on gross receipts for services to laundries and dry-cleaners and hotels not acting as agent will be one-fourth of 1%.

Reg. 177. Greenhouses.—Gross receipts of greenhouses will be taxable at the rate of 1% from sales to the consumer, one-fourth of 1% upon receipts from wholesale sales.

Reg. 178. Hatcheries.—The gross receipts of hatcheries will be classified as receipts from wholesale sales and will be taxed at the rate of one-fourth of 1%. However, all re-

ceipts from charges for custom hatching will be classified [fol. 238] as receipts from personal services and will be taxable at the rate of 1%.

Laundries.—See dry-cleaners, Reg. 176.

Reg. 179. Job Printers.—Job printers, printing companies and newspaper publishers selling job printing to the consumer will be taxed upon their gross receipts therefrom at the rate of 1%. The gross receipts from all sales to others for resale will be taxable at the rate of one-fourth of 1%.

Reg. 180. Judgments.—Amounts received by judgments which would be exempt from taxation if paid without suit will not be taxable. Amounts received by judgment for property damage will be exempt from this tax to the extent of the amounts used for replacement of the property damaged. The entire amount received by judgment for personal damages will be taxable. In no case may reportable amounts be reduced for taxation on account of attorney's fees, court costs, or any other expenses incident to litigation.

Reg. 181. Ministers.—Ministers will be required to report their gross income for taxation at the rate of 1% and include all salaries, fees, contributions, maintenance, quarters, rentals furnished and other emoluments received in connection with their profession.

Reg. 182. Newspapers.—Publishing companies which market newspapers, magazines and periodicals through others are not deemed to be selling directly to the consumer and the tax on such gross receipts will be at the rate of one-fourth of 1%. Job printing work sold direct to the consumer must be included for taxation at the rate of 1%.

Reg. 183. Photographers.—Photographers who take personal photographs will be considered as selling at retail for that part of their business and the 1% rate will apply. [fol. 239] If, however, they do commercial work for advertising agencies, or for manufacturers to be used in advertising, the receipts from such sales will be considered wholesale and taxable at one-fourth of 1%.

Reg. 184. Restaurants and Cafes.—Restaurants and cafes are deemed to be selling to the consumer and the gross re-

ceipts from such businesses will be taxable at the rate of 1%.

Reg. 185. Slot and Vending Machines.—The entire gross receipts of slot and vending machines will be taxable to the owner or lessor of the machine at the rate of 1% without deductions for "splits," rentals, or commissions paid to those in charge of the machine. Those persons in charge of such machines and receiving either "splits," rentals, commissions, or other remuneration of any kind will be required to pay tax at the rate of 1% upon all such "splits," rentals, commissions, or other remuneration received.

Reg. 186. Threshermen.—The gross receipts of threshermen are classified as receipts from personal services and are taxable at the rate of 1%.

Reg. 187. Undertakers.—The gross receipts from professional charges will be taxable at the rate of 1%. Gross receipts of undertakers will not include money received as repayment of charges paid by the undertaker for client under the "funeral complete" plan.

Reg. 188. Wheat Allotment Contracts.—Amounts received from the United States Government under and pursuant to wheat allotment contracts or similar plans of contract must be included in gross receipts for taxation at the rate of 1%.

Reg. 188a. Receipts from U. S. Government on Account [fol. 240] of Crop and Live Stock Contracts.—Money received from the Federal government or its agencies as crop allotment payments, or similar plans or contract affecting the production of crops will be taxable under the Indiana Gross Income Tax Act.

Money received under contracts involving the non-raising of crops will be considered land rental. Rental money received from the Federal government is not exempted under Section 6-a or 6-c of the gross income tax Act which provides for the exemption of proceeds from sale to, or emoluments paid by, the United States government.

Money received from the Federal government or its agencies on account of live stock contracts are not considered as rentals, but are considered benefit payments as the sales price of live stock and would therefore be exempt under Section 6-c of the Indiana Gross Income Tax Act. (Approved September 25, 1934.)

Article 43

Penalties

Reg. 189. Penalties will be imposed as provided by law for failure to follow the requirements of the gross income tax Act of 1933 or of the regulations issued thereunder.

(a) Interest. If tax is not paid when due, interest shall be added to all amounts due, at the rate of 1% per month from the date the tax was due.

(b) Deficiency in Tax. When there is a deficiency in payment of tax, interest at the rate of 1% per month shall be added from the date tax was due until paid.

(c) Negligence and Disregard of Rules. If the deficiency in tax payment is due to taxpayer's negligence or intentional disregard of authorized rules and regulations with knowledge thereof, there shall be added (in addition to 1% interest per month) a penalty of 10% of the deficiency in tax, which interest and penalty shall become due and payable upon notice and demand by the department of treasury.

(d) Fraud with Intent to Evade. If the deficiency in tax payment is due to fraud with intent to evade the tax, there shall be added (in addition to 1% interest per month) 50% of the total amount of the deficiency in tax, which will become due and payable on notice and demand by the department of treasury.

(e) Failure and Refusal to File a Return. If a taxpayer fails or refuses to file a return as required by the Act, the department of treasury shall give written notice by registered mail to such taxpayer to make such return within 30 days from the date of such notice and if the taxpayer fails or refuses to file a return then a return will be made by the department of treasury from the best information available and such return shall be *prima facie* correct for the purposes of the Act, and if payment be not made within thirty days after demand therefor by the department of treasury, there shall be added fifty per cent of the deficiency in the tax as a penalty, together with interest at the rate of 1% per month on the tax from the time such tax was due. If such tax be paid within 30 days after notice by the department of treasury, then there shall be added 10%

as a penalty, and interest at the rate of 1% per month from the time such tax was due until paid.

(f) Warrant to Sheriff. If any tax imposed or any portion of such tax be not paid within 60 days after the same becomes due, the department of treasury shall issue a warrant under its official seal directed to the sheriff of any [fol. 242] county in the state commanding him to levy upon and sell the real and personal property of the person owing said tax, found within his county, for the payment of the amount thereof, with damages to the amount of 10% of the tax, in addition to the penalties imposed for failure to make a return, or for making a fraudulent return, and interest, and costs of executing the warrant, and to return such warrant to the department of treasury and pay to it the money collected by virtue thereof, by a time to be therein specified, not more than 60 days from the date of the warrant. * * * Such warrant when issued to the sheriff shall within five days after the receipt thereof be docketed by the clerk of the court in the judgment records and thereupon shall become a lien upon the title to and interest in the real and personal property of the tax-payer in the same manner as any judgment except that it will be a preferred lien. Levy by the sheriff upon any property of the taxpayer will be in all respects with like effect and in the manner prescribed by law, in respect to executions issued against property upon judgment of attachment proceedings of a court of record.

The taxpayer will not in any case be permitted to make settlement with the department of treasury after warrant has been issued but must pay all tax, penalties, interest and fees to the sheriff and the sheriff will then be required to make full and complete remittance to the department of treasury of the amount of tax, penalties, interest and damages demanded in the writ.

(g) Collection of Tax by Civil Action. A tax due and unpaid under this act shall constitute a debt due the state, and may be collected by action at law, or other appropriate judicial proceedings, which remedy shall be in addition to [fol. 243] all other existing remedies; and the same shall be collected, together with an additional 10% of the amount of the tax and penalties imposed for failure to make a return, or for making a fraudulent return, and the costs of collection if paid within 30 days after the date said tax

was due, and an additional 2% of the amount of the tax for each succeeding 30 days or fraction thereof elapsing before the tax shall have been paid; Provided, however, That the additional 2% penalty shall not be applied until a 10 day notice of delinquency shall have been sent to the taxpayer. (Law at sec. 13b.)

(h) Restraint and Injunction. Any person against whom a tax shall be assessed as herein provided shall be restrained and enjoined upon the order of the department of treasury, by proper proceedings instituted in the name of the State of Indiana brought by the attorney general and/or any prosecuting attorney at the request of the department of treasury, from engaging and/or continuing in business, until the taxes shall have been paid, and until such person shall have complied with the provisions of this act; and such attorneys shall prosecute violations of criminal provisions of this act, upon the request of the department of treasury. (Law at sec. 13c.)

(i) Criminal Offenses. It shall be unlawful for any person to fail or refuse to make the return provided to be made under the provisions of this Act, or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this Act; or for the president, vice-president, secretary, treasurer or other officer or employee of any company to make or permit to be made for any company or association any false return, [fol. 244] or any false statement in any return required by this Act, with the intent to evade the payment of any tax hereunder; or for any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department of treasury, or its duly appointed agents, as required by this Act; or to fail or refuse to permit the inspection or appraisal of any property by the department of treasury or its duly appointed agents, or to refuse to offer testimony or produce any record as required in this Act. Any person, violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars, or imprisoned not exceeding six months in the county jail, of the county in which the action is instituted, or punished by both such fine and imprisonment, at the discretion of the court or jury trying the case, within

the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and, on conviction thereof, shall be punished in the manner provided by law. Any company for which a false return, or a return containing a false statement as aforesaid, shall be made, shall be guilty of a misdemeanor, and may be punished by a fine of not more than five hundred dollars. (Law at sec. 23.)

Article 44

Temporary Regulations

Reg. 190. Deferment of Report of Gross Receipts Derived from Inter-State Sales.—Any taxpayer engaged in the business of manufacturing, wholesaling, jobbing or retailing, who has gross receipts derived from inter-state sales, will [fol. 245] not be required to include such receipts in any return already filed or to be filed prior to the time that the supreme court of the State of Indiana shall render a decision in a case now pending wherein the James D. Adams Manufacturing Company is plaintiff and the department of treasury of the State of Indiana is defendant.

However, every taxpayer engaged in the business of manufacturing, wholesaling, jobbing, or retailing and having gross receipts from inter-state sales will be required to keep a separate account of all such gross receipts and in the event it is the decision of the supreme court that the State of Indiana may assess and collect a tax on such receipts then every taxpayer having receipts from inter-state sales will be required to make amended returns for all periods for which returns have been made prior to such decision and to include therein all such gross receipts.

[fol. 246] If the income of any taxpayer has been derived entirely from such sources as herein set out and on account of such deferment not heretofore been liable for a return, he will be required to make returns for all periods and in addition to his other income included therein gross receipts derived from earnings and activities without the State of Indiana.

The mere fact that sales are made to a place or person without the state will not of itself be sufficient to bring such sales within inter-state commerce but such transactions

must have all the elements of inter-state commerce before the taxpayer can be permitted to defer the payment of tax upon such sales. All sales made at retail will be considered to have been made intra-state whether delivered to customers within or without the state.

Reg. 191. Deferment of Report of Gross Receipts from Income Derived from Earnings or Activities Carried on Entirely Outside the State of Indiana.

NOTE.—This Regulation is printed herein for back reference only. It was revoked by the Department Dec. 31, 1935, and superseded by Regulation 193 following.

Any taxpayer having gross receipts derived from earnings or activities carried on entirely without the State of Indiana will not be required to include such receipts in any return already filed or to be filed prior to the time that the supreme court of the State of Indiana shall render a decision affecting the right of the State of Indiana to impose a tax thereon.

However, no taxpayer within the state will be permitted to defer gross receipts simply for the reason that they are paid to him by persons or companies who are domiciled or [fol. 247] resident without the State of Indiana and the mere fact that any taxpayer receives money from without the state will not alone permit such taxpayer to defer the reporting of such income.

Every taxpayer having gross receipts derived from earnings and activities carried on entirely outside the state will be required to keep a separate account of such gross receipts and in the event it is the decision of the supreme court that the State of Indiana may assess and collect a tax upon such gross receipts, then every such taxpayer will be required to make amended returns for all periods for which returns have been made and to include therein such gross receipts as are derived from earnings and activities without the State of Indiana.

If the income of any taxpayer has been derived entirely from such sources as herein set out and on account of such deferment not heretofore been liable for a return, he will be required to make returns for all periods and in addition to his other income include therein gross receipts derived from earnings and activities without the State of Indiana.

This regulation has no bearing or relation to the deferring

of tax on receipts from inter-state commerce, as set out in Reg. 190.

Article 45

Appendix

Reg. 192. Whenever a taxpayer files a return accompanied by a certificate of a certified public accountant, registered as such by the State Board of Certified Accountants of Indiana, in which the certified public accountant certifies that he has examined the taxpayer's books and [fol. 248] prepared the return in accordance with the Gross Income Tax Act and the regulations issued thereunder, such return may be accepted by the Gross Income Tax Division without further audit of the taxpayer's books. In any case in which the taxpayer and the certified public accountant disagree with the Department's regulation as to the interpretation of the act with respect to any item or items appearing in the return and to that extent the return is not in accord with the regulations, full disclosure of all the facts as to such variation shall be made in the return and accompanying schedules and in the certificate of the certified public accountant. In such cases the return and certificate may be accepted by the Gross Income Tax Division as containing all of the facts upon which a determination of the tax liability can be made without further audit of the taxpayer's books.

Any intentional misstatement or omission of a material fact in a gross income tax return certified to by a certified public accountant shall be made the basis of a proceeding under Section 3, Chapter 175, Acts of 1921, and amendments thereto for the revocation of the certificate of said certified public accountant.

Nothing in this regulation shall be construed as a waiver or limitation of the Department's right to examine the books and records of a taxpayer in any case in which the Department determines that such examination is necessary. (Approved November 30, 1934.)

Reg. 193. Ruling Revoking Regulation 191 and Specifying Taxable and Non-Taxable Income Received by Persons Resident and/or Domiciled in Indiana from Sources in Other States.—Regulation 191 issued by the Department of Treasury respecting income derived by residents of Indi-

[fol. 249] ana from earnings, or from activities, carried on entirely outside the State of Indiana, is hereby revoked and the deferment privilege granted thereunder is hereby cancelled. Hereafter all income from activities from sources entirely outside the State of Indiana will be designated as "taxable" or "non-taxable"—the words "deferrable" and "non-deferrable" being no longer applicable to such income.

All persons as defined in the Gross Income Tax Act who are resident and/or domiciled in Indiana will be required to report for taxation their gross income received on and after May 1, 1933, from all sources, including that derived from out of state sources and activities except where such gross income is derived from a business regularly carried on, the situs of which is outside the state; from real property situated outside the state; or from intangibles having a business situs outside of Indiana and such intangibles are not held within the State of Indiana. The mere fact that income is received from a point located out of the State will not of itself affect the taxability of such income.

For the purpose of fixing the taxable status of specific kinds of income, the following rulings are made as a part of this regulation with respect to the classifications set out.

1. Wages, Commissions, Salaries, Fees, and all Other Personal Remuneration.—Persons resident and/or domiciled in Indiana will be required to report for taxation their entire income of this class received as remuneration for personal services, regardless of the fact that their employer is located outside the State or that a part of or all of their [fol. 250] employment is in states other than Indiana, or that they are paid from a place the location of which is in states other than Indiana.

2. Rentals of Real Estate Located Outside of Indiana.— Persons resident and/or domiciled in Indiana owning real estate situated in states other than Indiana will not be required to pay tax upon rentals derived from such property.

3. Rental of Personal Property.—Persons resident and/or domiciled in Indiana receiving income derived from rentals of personal property located in other states will be taxable thereon unless such personal property is a part.

of a business regularly engaged in with its legal situs in such other states.

4. Receipts from Businesses Maintained and Operated Wholly Outside the State.—Persons resident and/or domiciled in Indiana who are engaged in business, the legal situs and location of which is in states other than Indiana, and the activities of such business are carried on in states other than Indiana, will not be required to pay tax upon the gross receipts therefrom. For the purpose of this ruling the operation of a farm will be included under the term "engaged in business."

5. Interest, Dividends and Royalties.—Persons resident and/or domiciled in Indiana will be required to report and pay tax upon the receipts of royalties from patents or copyrights, dividends from stocks, and interest derived from warrants, bonds taxable in Indiana, notes and other interest bearing securities having as their legal situs the domicile of the owner. (The mere depositing or placing of securities at a place outside of Indiana will not be sufficient to fix their legal situs at a place other than the domicile of the owner.)

[fol. 251] 6. Sale of Real Estate Located Outside of Indiana.—Persons, resident and/or domiciled in Indiana will not be required to report and pay tax upon any of the proceeds from the sale of real estate owned by them and situated in states other than the State of Indiana.

7. Sales of Intangible Assets.—Persons resident and/or domiciled in Indiana will be required to report for taxation all proceeds from the sale of intangible property where the legal situs of such property is in Indiana, even though sale is made outside the state. This will include proceeds from the sale and/or surrender of capital stock to a corporation in dissolution. This will also include all receipts of persons resident and/or domiciled in Indiana derived from outright sales of securities or from marginal stock transactions negotiated through brokers situated outside the state. The legal situs of all intangibles is presumed to be the domicile of the owner. (Provided, however, whenever such intangible property has a legal business situs as set out in No. 4 herein, the proceeds from the sale of such property will not be reported for taxation.)

8. Sale of Tangible Personal Property.—Persons resident and/or domiciled in Indiana receiving proceeds from the sale of personal property in states other than Indiana will be taxable thereon unless it can be shown that such personal property is an integral part of a business regularly engaged in by such person and which has its legal situs outside of Indiana.

9. Alimony.—Persons resident and/or domiciled in Indiana will be taxable upon the receipt of alimony paid to them by persons resident of this state or by persons domiciled in other states, whether such alimony be awarded by Indiana courts or courts located in states other than Indiana.

[fol. 252] 10. Insurance.—Persons resident and/or domiciled in Indiana will be taxable upon money received from out of state insurance companies on policies of every kind or character except as provided in Article No. 13 of the Department's Regulations, and Section 6-d and 6-e of the Act. Insurance companies domiciled in Indiana will be taxable on all premium income (subject to the limitations set out in Section 1 (h) of the Act), regardless of the fact that a part of such premiums are from policies sold outside of Indiana.

11. Performance of Contracts.—Persons resident and/or domiciled in Indiana will not be required to report and pay tax upon gross income from contracts where such contracts are entered into and performed entirely outside of Indiana.

Constructive Receipts

Whenever any of the taxable receipts as classified above are constructively received as defined in Regulation 130, they will be considered as taxable or non-taxable, consistent with the rulings as made herein on each classification as though such receipts actually came into the taxpayer's possession. Amounts received by judgment for any of the gross receipts above classified will have a taxable status consistent with the rulings pertinent thereto and with Regulation No. 180.

This Regulation shall be as in force and effect from May 1, 1933, and all taxable gross income as designated in the foregoing, received on or after such date, the report and taxation of which has been deferred under Regulation 191, must be reported and tax paid thereon on or before January

30, 1936, by filing amended annual returns for 1933 and 1934. Deferred income received during quarterly periods [fol. 253] of 1935 must be reported on the regular 1935 annual return. No interest or penalty will be imposed when report and payment is made as herein provided. If report and payment is not made by the date designated herein, interest will be added at the rate of 1% per month from the regular dates tax was due upon such income. This Regulation in no way affects the status of receipts from transactions in interstate commerce and the deferment privilege granted by Regulation 190 with reference to such receipts will remain in force until such Regulation is rescinded by the Department. (Approved December 31, 1935.)

July 31, 1934.

The foregoing regulations are hereby made and promulgated and supersede any and all former regulations issued by The Department of Treasury, and are effective on and after this date.

C. A. Jackson, Director, Gross Income Tax Division of the Department of Treasury of Indiana.

Approved July 31, 1934. William Storen, Chief Administrative Officer of The Department of Treasury of Indiana.

The Department of Treasury: Paul V. McNutt, Governor. William Storen, Treasurer of State. Floyd E. Williamson, Auditor of State.

Revised May 23, 1936. C. A. Jackson, Director, Gross Income Tax Division of the Department of Treasury of Indiana.

[fol. 254] Revision Approved May 23, 1936. Peter F. Hein, Chief Administrative Officer of The Department of Treasury of Indiana.

The Department of Treasury: Paul V. McNutt, Governor. Peter F. Hein, Treasurer of State. Laurence F. Sullivan, Auditor of State.

[fol. 255] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 256] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON AND
DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—
Filed December 20, 1937

Comes now the appellant and adopts its assignment of errors in the appeal herein as its statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for consideration of this case.

Dated this 29th day of November, 1937.

Frederick E. Matson, Harry T. Ice, Attorneys for Appellant. Matson, Ross, McCord & Clifford, Of Counsel.

Due and timely service of the appellant's service of points to be relied upon and designation of parts of the record to be printed is acknowledged this 29th day of November, 1937.

Omer Stokes Jackson, Attorney General of Indiana; Joseph W. Hutchinson, Deputy Atty. General of Indiana; Joseph L. McNamara, Deputy Atty. General of Indiana, Attorneys for Appellees.

[fol. 257] [File endorsement omitted.]

Endorsed on cover: File No. 42,122. Indiana Supreme Court. Term No. 641. J. D. Adams Manufacturing Company, appellant, vs. William Storen, as Chief Administrative Officer of the Department of Treasury of the State of Indiana. Filed December 17, 1937. Term No. 641, O. T., 1937.